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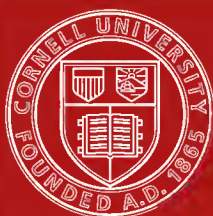
Newton's digest of Patent Office trade-m



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NEWTON'S DIGEST
OF
PATENT OFFICE
TRADE-MARK DECISIONS

BY
J. T. NEWTON,
EXAMINER TRADE-MARKS U. S. PATENT OFFICE.

CHICAGO :
CALLAGHAN & COMPANY,
1896.

B79430

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PREFACE.

AS a guide in passing upon questions constantly arising in the registration of Trade-Marks in the United States Patent Office, I have found a digest of Commissioners' decisions of great assistance. The compilation of such a digest has required a considerable expenditure of labor, as no one had preceded me in the work, and believing that it would prove useful to applicants and attorneys in trade-mark registration cases I have concluded to publish the same.

I have endeavored to make the digest complete from the time of the passage of the Trade-Mark Act of 1870 down to date, leaving out only such decisions as were believed to be entirely useless under the present practice of the office.

Where it would materially aid in properly understanding the case, the *fac-simile* of the mark has been added, if it was possible to obtain such *fac-simile*.

J. T. NEWTON,

Examiner of Trade-Marks.

UNITED STATES PATENT OFFICE,

August 6, 1896.

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NEWTON'S DIGEST
OF PATENT OFFICE
TRADE-MARK DECISIONS.

ALTERNATIVE FORM.

1. WEAVER.

June 6, 1876. C. D. 1876, 139.

DUELL, Commissioner:

"Lion," Representation of Same.—A trade-mark which was described as "consisting in the term or designation 'Lion,'" may be registered as a trade-mark citing *Morrison et al. v. Case*, 2 O. G., 544.

2. PEPER.

August 26, 1879. C. D. 1879, 221.

PAINE, Commissioner:

"Corn," Representation of Same.—Alternative form of trade-marks seems to be warranted by the authorities, but both of such forms should be shown in the *fac-simile*.

3. AMERICAN MACHINE CO.

November 16, 1878. 19 MS. D., 101.

DOOLITTLE, Acting Commissioner:

"Crown," Representation of Same.—The word "Crown" and the representation of a crown are held to be true equivalents and may be registered in the alternative form.

4. NOLET.

December 12, 1890. 45 MS. D., 49.

FISHER, Assistant Commissioner:

“Monogram.”—The word “Monogram” is not a generic word including under it well known species. A barrel of gin, for instance, bearing the specific monogram “S. T. D.” gin, would be known as “S. T. D.” gin, and not as “monogram” gin. Every dealer in gin who uses his particular monogram is not thereby entitled to the exclusive use of the word “Monogram.” The word may therefore be registered as a trade-mark.

5. IOWA FARM TOOL CO.

August 4, 1892. 51 MS. D., 12.

FROTHINGHAM, Assistant Commissioner:

“Crucible.”—The word “Crucible” and the representation of a crucible which the examiner stated was a fair representation of a foundry ladle, *held* not to be such alternatives as should be registered in one application.

6. ADAM ROTH GROCERY CO.

December 17, 1892. 62 O. G., 315.

SIMONDS, Commissioner:

“Squirrel,” Representation of Same.—While a word and a picture which invariably express the same idea may be covered by one registration in an alternative form, the rule does not apply in the case of the word “squirrel” and the representation of one species of squirrel.

7. HEITZBERG PACKING AND PROVISION CO.

March 2, 1893. 52 MS. D., 156.

FROTHINGHAM, Assistant Commissioner:

“Woodcock,” Representation of Same.—A trade-mark in which the essential features were stated to be “The word ‘Woodcock,’ and the representation of the bird known as the woodcock substantially as shown, either of which may be used alone or the two may be used together,” refused registration under *ex parte* Adam Roth Grocery Co., C. D. 1893, 6.

8. LAZARUS, SCHWARZ & LIPPER.

August 23, 1893. 64 O. G., 1396.

FISHER, Assistant Commissioner:

“Crescent,” Representation of Same.—The word “Crescent” and the representation of a crescent-shaped figure, *held* not true alternatives and registration refused. (*Ex parte* Pepper, 16 O. G., 678.)

9. RICHARDS & SONS.

May 18, 1894. 54 MS. D., 245.

FISHER, Assistant Commissioner:

“White Lily,” Representation of Same.—The examiner affirmed in refusing to register a trade-mark in the alternative form, where the trade-mark was stated to consist of the word “White Lily, or the representation of a white lily,” the representation being a nondescript flower having no characteristics of the lily.

10. LATHROP & CO.

December 17, 1894. 55 MS. D., 438.

FISHER, Assistant Commissioner:

“Buffalo Brand.”—Applicant stated that the “essential feature of the trade-mark is ‘Buffalo Brand.’” His mark consisted of the head of an American buffalo or bison with the words “Buffalo” above and “Brand” below. *Held*, that registration was properly refused because it was uncertain whether applicant claimed the word “Buffalo” or the representation, and that these were not true alternatives.

11. KINNEY.

August 3, 1895. 57 MS. D., 255.

SEYMOUR, Commissioner:

“Rosebud,” Representation of Same.—The essential features of the trade-mark were stated to be the symbol “Rosebud.” This was objected to by the examiner as being alternative in form. *Held*, that the trade-mark as offered is,

so far as appears, a lawful common-law mark, and where the prescribed statutory requisites are present it is thought that the administration of the law should be reasonably liberal concerning registration, and the objection of the examiner was overruled.

12. PRITCHARD.

August 22, 1895. 57 MS. D., 374.

FISHER, Assistant Commissioner:

“Eagle,” Representation of Same.—A trade-mark, the essential features of which are stated to be “An eagle represented by word or symbol,” may be registered, although in the alternative form. (*Ex parte* Kinney, 57 MS. D., 255, followed.)

ARBITRARY MARKS.

13. ENGLISH.

November 2, 1870. C. D. 1870, 142.

FISHER, Commissioner:

The letter "X" may constitute a proper trade-mark.

14. ROBERTS.

April 24, 1871. C. D. 1871, 100, 101.

LEGGETT, Commissioner:

Name in Combination with Other Words.—The expression "A Luxury, R. J. Roberts' Razor Steel Scissors. The best in the world. The best is the cheapest," and "An exquisite pleasure to shave with R. J. Roberts' Diamond-edged Razors," and "R. J. Roberts' Diamond-edge Razors. Every Razor Warranted," may all be registered as trade-marks in accordance with the decision *ex parte* Blanchard & Sons, C. D. 1871, 97.

15. FRANCIS & MALLON.

November 8, 1871. C. D. 1871, 283.

LEGGETT, Commissioner:

"Beaverine," for Boots and Shoes.—The examiner objected to the word "Beaverine" as a trade-mark for boots and shoes made partly from beaver cloth, because of its suggestive character. *Held*, that such suggestiveness did not render the trade-mark illegal. It is true no person has any right to take a known word, descriptive or even suggestive of quality, and claim exclusive use of it; but when he coins a word it is his, and the fact that it may suggest quality is no reason for its rejection.

16. GLINES.

July 28, 1875. C. D. 1875, 97.

SPEAR, Acting Commissioner:

"Slate Roofing Paint," for Roof Paints.—The words "Slate Roofing Paint" are not descriptive, since the paint on which they are used only contains about two per cent. of slate.

17. CLARK & HUNTINGTON.

August 13, 1875. 16 MS. D., 65.

SPEAR, Acting Commissioner:

"Perfect Baking Powder."—The word "Perfect" is not descriptive as applied to baking powder in the sense that the words "white," "granulated," etc., would be, but is more in the nature of the word "excelsior" (Braham v. Bustard, Cox's T. M. Cases, 674), and may be registered as a trade-mark.

18. PETERS.

February 26, 1876. 16 MS. D., 345.

SPEAR, Acting Commissioner:

"The Ragsdale Ammoniated Dissolved Bone."—While the words "Ammoniated Dissolved Bone" are descriptive, the words "The Ragsdale" are arbitrary, and the whole phrase may be registered as a trade-mark.

19. DAWSON & WATSON.

April 21, 1876. 16 MS. D., 472.

DOOLITTLE, Acting Commissioner:

"Amber Lubricating Oil Works."—While the words "Lubricating Oil Works" may be employed by any corporation doing business in that line, the addition of the arbitrary word "Amber" relieves this case from the objection noted against the trade-mark in Rowe v. Post, 9 O. G., 496, and renders the phrase registerable as a trade-mark.

20. ROHLAND.

December 9, 1876. C. D. 1876, 248.

DOOLITTLE, Assistant Commissioner:

“Dr. Lobenthal’s Essentia Antiphthisica.”—The above words may be registered as a trade-mark for medicine, since the words “Essentia Antiphthisica” are not found in the pharmacopœias.

21. ROSS, TURNER & CO.

January 12, 1877. 18 MS. D., 253.

DOOLITTLE, Acting Commissioner:

“Green Label Thread,” for Thread.—The words “Green Label Thread” are sufficiently arbitrary, if applicants are the first to use green labels on their threads, to warrant their registry as a trade-mark.

22. LINDSAY.

February 5, 1877. 17 MS. D., 277.

DOOLITTLE, Acting Commissioner:

“One Length Brand,” for Dry Goods.—The phrase “One Length Brand” as applied to dry goods is sufficiently arbitrary to warrant registration as a trade-mark.

23. ROBINSON, LORD & CO.

March 2, 1877. 17 MS. D., 310.

DOOLITTLE, Acting Commissioner:

“No Brand,” for Matches.—The words “No Brand” are not a mere announcement, as stated by the examiner, but have a very different function, and may be registered as a trade-mark.

24. LAMBIE & SARGENT.

May 2, 1877. Endorsed.

DOOLITTLE, Acting Commissioner:

“Utility,” for Furniture.—Words objectionable as trade-marks, because denoting the quality or characteristics of the things to which they are attached, must be, grammatically

speaking, adjectives, and are generally used in connection with the name of the thing they describe. The word "Utility" is a noun. Standing alone it describes nothing, and to call a table a utility table would be ungrammatical. Hence the word is arbitrary and may be registered.

25. HILL & CO.

May 12, 1877. 17 MS. D., 405.

SPEAR, Commissioner:

"Tackless," for Boots and Shoes.—The word "Tackless" is not purely descriptive as applied to boots and shoes, but is sufficiently doubtful to warrant its registration.

26. WARNER BROTHERS.

May 23, 1877. 17 MS. D., 414.

DOOLITTLE, Acting Commissioner:

"Duplex," for Stocking Supporters.—The word "Duplex" as applied to applicants' stocking supporters can hardly be termed descriptive; multiplex would better describe it, and the word may be registered as a trade-mark.

27. ROBINS.

May 31, 1877. Endorsed.

DOOLITTLE, Acting Commissioner:

"Peerless," for Ointment.—The word "Peerless" should not be registered as a label since it is fanciful in character.

28. DICK.

July 13, 1877. 17 MS. D., 489.

SPEAR, Commissioner:

"Soft Capsules."—The words "Soft Capsules" are not purely descriptive, and as it further appeared that the words had been recognized as a trade-mark rightfully in use on the 8th day of July, 1870, they may be registered as a trade-mark.

29. RUBBER CUSHION AXLE CO.

October 12, 1877. 18 MS. D., 89.

SPEAR, Commissioner:

“Cushioned Axle,” for Axles.—The words “Cushioned Axles” as applied to axles or axle boxes are not purely descriptive, as, for instance, are the words “wooden” or “iron,” and while the case is a marginal one the doubt should be given applicant.

30. ST. LOUIS BEEF CANNING CO.

June 7, 1878. 18 MS. D., 183.

DOOLITTLE, Acting Commissioner:

Figure of an Ox for Canned Meats.—The figure of an ox as applied to canned meats of all descriptions cannot be regarded as entirely descriptive, especially in view of the fact that the name of the animal represented by the figure would not be the commercial name of the article to which the symbol is attached.

31. BOWRING & ARCHIBALD.

August 17, 1878. 18 MS. D., 492.

SPEAR, Commissioner:

“Electric Light,” for Refined Petroleum.—The words “Electric Light” may be registered as a trade-mark for refined petroleum, since they are neither descriptive nor deceptive to a purchaser of ordinary intelligence.

32. HANSCHILDT.

August 27, 1878. Endorsed.

SPEAR, Commissioner:

“Everlasting.”—The word “Everlasting” is not, accurately speaking, descriptive, since no human productions are *everlasting*, and the word may be registered.

33. DERVIES.

July 7, 1879. Endorsed.

DOOLITTLE, Acting Commissioner:

"Agency's Favorite."—The words "Agency's Favorite" are arbitrary and not even recommendatory so far as a personal application is concerned and may be registered.

34. GOODWIN & CO.

September 13, 1879. Endorsed.

DOOLITTLE, Acting Commissioner:

"Superb," for Tobacco.—The definition given by Webster of the word "Superb" indicates that that word is inapplicable to any description of chewing tobacco, and it may be registered.

35. HEYMAN.

May 31, 1880. C. D. 1880, 194.

MARBLE, Commissioner:

"Invigorator," for Bed Bottoms.—While it is true that by a process of logical deduction the word "Invigorator" as applied to bed bottoms may be resolved into a description, since a spring bed bottom may be conducive of sleep, and sleep invigorates, the primary significance which the public would attach to this term would be a fanciful one.

36. COMBE & ORIOLE.

March 29, 1880. 21 MS. D., 13.

PAINE, Commissioner:

"Grison," meaning Donkey, etc., for Kid Leather.—The examiner rejected the word "Grison," which is the French for gray-head, gray-beard, donkey, etc., on the ground that, as donkey skins were used for leather, the term as applied to kid leather was either descriptive or deceptive. Examiner overruled.

37. PERCY.

March 23, 1880. 21 MS. D., 3.

DOOLITTLE, Acting Commissioner:

“Vitalized,” for Phosphates.—The word “Vitalized” is sufficiently fanciful to be registered as a trade-mark for phosphates. It is no objection to a word as a trade-mark that it is used to attract attention as an advertisement, if it does not convey a false impression.

38. ASCHERMAN & CO.

October 12, 1880. 21 MS. D., 396.

MARBLE, Commissioner:

“Blunt Heads,” for Cigars.—The words “Blunt Heads” are sufficiently arbitrary to constitute a valid trade-mark for cigars.

39. EGERSDORFF.

October 10, 1881. 22 MS. D., 381.

MARBLE, Commissioner:

“Corn, Wart, Skin.”—The words “Corn, Wart, Skin,” may be registered as a trade-mark for a corn, wart and bunion medicine, since those words are only suggestive and not descriptive. (Ex parte Heyman, 18 O. G., 922.)

40. RAMSEY & CO.

October 15, 1881. 22 MS. D., 389.

MARBLE, Commissioner:

Union Cylinder Oil.—A label consisting of the word “Union” prefixed to the words “Cylinder Oil” should not be registered as a label, since those words constitute a fanciful term and are registrable as a trade-mark. (This label was subsequently amended by inserting “Non-Corrosive” after Union. *Held*, on appeal [23 MS. D., 81], that this did not change the nature of the case.)

41. BROOK & BROS.

January 6, 1882. 23 MS. D., 21.

STOCKBRIDGE, Acting Commissioner:

"1851 London 1862. 1855 Paris 1867."—The figures and words "1851 London 1862. 1855 Paris 1867" cannot be considered as descriptive of the place where the goods are manufactured, but as descriptive of medals, and even if others have obtained the same medals there yet remains to applicants the arbitrary arrangement of these words and figures, which is sufficient to sustain a trade-mark.

42. SIMONDS MFG. CO.

January 22, 1883. 23 MS. D., 472.

MARBLE, Commissioner:

"Special," for Saws.—There is no definition of the word "Special" which makes it descriptive or indicative of grade or quality, as applied to saws, and it may be registered as a trade-mark.

43. FORBES & CO.

May 8, 1893. 24 MS. D., 235.

MARBLE, Commissioner:

"Prize Baker," for Stoves.—It does not follow that because the word "Prize" has been placed on stoves that it is a necessary inference that a prize has been awarded that stove, and in combination with the word "Baker" the two words form a valid trade-mark and may be registered.

44. PEARSALL.

January 27, 1885. 27 MS. D., 203.

BUTTERWORTH, Commissioner:

"Wooden Indian," for Cigars.—Although the figures of Indians which are generally made of wood are everywhere the recognized sign of the tobacconist, and any one using such a figure has the right to call it by its proper name, this does not prevent one from acquiring the exclusive right to use the words "Wooden Indian" as a trade-mark for cigars.

45. SHUMAN & CO.

October 23, 1885. 29 MS. D., 231.

VANCE, Acting Commissioner:

“Cavalry Seat,” for Boys’ Clothing.—The words “Cavalry Seat” may be registered as a trade-mark for boys’ clothing; for although it is doubtless true that pants worn by cavalrymen are reinforced, this registration is only for boys’ clothing, and may be attached to other portions of a boy’s outfit than his trowsers.

46. SANBURN.

October 23, 1885. 29 MS. D., 232.

VANCE, Acting Commissioner:

“Standard,” for Roasted Coffee.—The word “Standard,” which has many meanings, having been frequently registered by the office as a trade-mark, allowed registration, especially as the present applicants had used it since 1878.

47. SILVER LAKE CO.

July 6, 1886. 31 MS. D., 132.

MONTGOMERY, Commissioner:

“A., B. and C.,” Registrable for Sash Cords.—Applicant presented three applications for registration. One for the letter A, a second for the letter B, and the third for the letter C, each letter to be used on a different species of sash cord. *Held*, 1st. That plain letters may be registered as trade-marks; and 2d. That the fact, which is conceded, that these several letters are used each to mark a certain kind of cord, presents no bar to their registration as trade-marks.

48. BARNEY MYROLEUM CO.

August 7, 1886. 31 MS. D., 253.

MONTGOMERY, Commissioner:

“Perpetual,” for Perfumery.—The word “Perpetual” as applied to perfumery, if for no other reason, is rendered arbitrary by its extravagance, and may be registered as a trade-mark.

49. CHESTER OIL CO.

October 25, 1886. 31 MS. D., 493.

MONTGOMERY, Commissioner:

"Matchless," for Petroleum Oil.—The authorities do not go so far as to hold that a word which is descriptive or partially descriptive shall be denied registration. It is in cases where the word is "descriptive merely" that such registration is refused. The word "Matchless" may therefore be registered.

50. TURNER.

July 11, 1887. 34 MS. D., 469.

HALL, Commissioner:

"K. of L.," for Gloves.—While it is fair to infer that the word and letters "K. of L." refer to the Knights of Labor, it is a mere inference, there is nothing that points to that association as the origin or owner of the article used in commerce. The device is rather a catch word to give prominence to the trade-mark, and may therefore be registered. This case distinguished from *ex parte* Block & Co., 40 O. G., 443.

51. MANSFIELD & CO.

October 18, 1887. 35 MS. D., 267.

VANCE, Assistant Commissioner:

"Honey," for Vermifuge.—The fact that honey is a well known vehicle for medicines should not prevent that word from being registered as a trade-mark for vermifuge.

52. BARBER.

March 17, 1888. 36 MS. D., 321.

VANCE, Assistant Commissioner:

"Magic," for Medicines.—The word "Magic" is proper subject-matter for registration as a trade-mark for medicines.

53. LEAKES.

August 13, 1888. 38 MS. D., 100.

HALL, Commissioner:

"Athlete's Towel."—The words "Athlete's Towel" are sufficiently arbitrary to constitute a valid trade-mark.

54. LOGAN.

October 6, 1888. 38 MS. D., 272.

VANCE, Assistant Commissioner:

"California Vitalizer."—The words "California Vitalizer" are sufficiently arbitrary to be registered as a trade-mark.

55. JELLERSON.

January 17, 1889. 39 MS. D., 144.

VANCE, Acting Commissioner:

"Ervelline Liquid Polish" not Registrable as a Label. The words "Ervelline Liquid Polish" being registrable as a trade-mark must first be registered as such before the words can be registered as a label.

56. BRADLEY & CO.

August 29, 1889. 41 MS. D., 30.

FISHER, Acting Commissioner:

"Handy" not Descriptive.—If the word "Handy" meant convenient in the sense of being well arranged or well adapted to the general purposes for which it is to be used, it might be held to be descriptive, but in the best usages it has no such meaning as applied to vehicles and may be registered as a trade-mark.

57. JOHNSON, GLOVER & CO.

March 25, 1890. 42 MS. D., 372.

FISHER, Assistant Commissioner:

"Bromo Phosphates."—It having been shown by the testimony of expert chemists that the words "Bromo Phosphates" cover an impossible compound, and the applicant's having coined the words, *held*, that they may be registered as a trade-mark for a medical compound.

58. ROSS.

July 10, 1890. 43 MS. D., 429.

FISHER, Acting Commissioner:

"Silk," for Soap.—The word "Silk" used as a trade-mark for soap would not ordinarily convey the idea that the soap was peculiarly adapted for washing silk, but has an arbitrary signification and may be registered.

59. MANITOU MINERAL WATER CO.

September 19, 1890. 44 MS. D., 231.

MITCHELL, Commissioner:

"Ginger Champagne"—The words "Ginger Champagne" may be registered as a trade-mark for effervescent or carbonated mineral water and ginger, although those words had long been used to designate an effervescing drink containing various ingredients.

60. SILVERMAN BROS. & CO.

November 26, 1890. 44 MS. D., 448.

MITCHELL, Commissioner:

"Harris Wire Buckle."—The examiner refused to register the words "The Harris Wire Buckle" for suspenders, on the ground that those words only advertised that the buckle invented by Harris and protected by patent was used upon applicants' merchandise. Applicants contended that the words indicated not that the buckles were patented by Harris, but that they were made by applicants. *Held*, that from the foregoing it was evident that a question of fact had arisen which it would be necessary to settle before determining this case, and it was remanded to the examiner to give the applicants an opportunity to prove their contention.

(See next decision.)

61. SILVERMAN BROS. & CO.

October 10, 1891. 48 MS. D., 228.

SIMONDS, Commissioner:

"Harris Wire Buckle."—The preceding decision only leaves the question to be decided whether the evidence adduced by applicants support their contention. *Held*, that it did, and without passing on the main question, regarding that as settled in the preceding decision, the decision of the examiner is overruled.

62. NOLET.

December 12, 1890. 45 MS. D., 49.

FISHER, Assistant Commissioner:

"Monogram."—The word "Monogram" is not a generic word, including under it well-known species. A barrel of gin,

for instance, bearing the specific monogram "S. D. T." would doubtless be known as "S. D. T." gin, and not as "monogram" gin. Every dealer in gin who uses his particular monogram is not thereby entitled to the exclusive use of the word "monogram." The word may therefore be registered as a trade-mark.

63. SMITH.

December 23, 1895. 58 MS. D., 151.

FISHER, Assistant Commissioner:

"Better than Best"—Meaningless.—The words "Better than Best," strictly speaking, are meaningless, and are sufficiently arbitrary to be registered as a trade-mark for flour.

64. HEINLE & CO.

September 13, 1895. 57 MS. D., 478.

FISHER, Acting Commissioner:

"O. K." not Descriptive.—The letters "O. K." are not descriptive of root beer, and may be registered as a trade-mark.

T. M.—2

ASSIGNMENT.

65. CHURCH.

November 21, 1881. Not recorded.

MARBLE, Commissioner:

Issue of Certificate to Assignee.—On December 23, 1878, the Alabastine Co. filed an application for registration. On September 24, 1881, M. B. Church filed an application for registration of the same mark and stated that he had come into the possession of the Alabastine Co.'s business and trade mark. The case was referred to the Commissioner for instructions. *Held*, that if Church filed papers showing an assignment to him of the trade-mark that a certificate might issue to him.

66. SPINNER.

July 25, 1887. 35 MS. D., 15.

HALL, Commissioner:

Recording Assignment of T. M. before Registry—Issuing Certificate to Assignee.—Applicant filed an application for registration of a trade-mark, then asked to have an assignment of the trade-mark recorded and the certificate issued to himself and the assignee jointly. *Held*, that while Rule 16 requires that the trade-mark must be identified by certificate number, this must mean that *where the certificate has been issued* the assignment must so identify the trade-mark. A broader construction of the rule would make it conflict with Section 12 of the Act of March 3, 1881. The assignment may therefore be recorded; but the trade-mark cannot issue to the assignee, as such practice would lead to confusion.

67. BASSETT.

May 12, 1891. 55 O. G., 997.

MITCHELL, Commissioner:

Issuance of Certificate to Assignee.—A certificate of registration of a trade-mark will not be issued to the assignee of the applicant, even though the assignment may have been previously recorded.

68. ROASTED CEREALS CO.

April 4, 1895. 55 MS. D., 455.

FISHER, Acting Commissioner:

Issue of Certificate to Assignee.—The Roasted Cereals Co., an applicant for the registration of a trade-mark, transferred its business and trade-mark to the Catskill Mill Co. This latter company requested that the certificate of registration issue in its name instead of in the name of the applicant. The sole question being whether a certificate of registration can issue to an assignee of the applicant, *held*, that it could not.

BENEFIT OF DOUBT.

69. BOGARDUS.

March 26, 1892. 50 MS. D., 2.

FROTHINGHAM, Assistant Commissioner:

Doubt in Favor of Registrant.—Where there is doubt concerning the similarity of two marks, such doubt should not be resolved in favor of the applicant, but in favor of the registrant.

70. BOWE.

May 2, 1892. 50 MS. D., 168.

FROTHINGHAM, Assistant Commissioner:

Doubtful Deceptive Marks Bad.—Where it is doubtful whether or not the public would be deceived in the use of a deceptive mark (as Cherry Cocktail for non-alcoholic drinks) the doubt should be resolved against the applicant.

CLASS OF GOODS.

71. INDIA RUBBER COMB CO.

July 26, 1875. 16 MS. D., 38.

THACHER, Commissioner:

Hard Rubber Goods.—Any person engaged in the manufacture of hard rubber goods is entitled to register a single trade-mark to be applied to all goods made of hard rubber.

72. BOEHM & CO.

August 24, 1875. C. D. 1875, 103.

SPEAR, Acting Commissioner:

What One Registration May Cover.—Bourbon, wheat and rye whiskies, wines, brandies and gins, may be covered by one registration, but bitters cannot properly be embraced in this registration. It is true that it is bad practice to cover by one registration so many articles, for if any one else has previously used the mark on one the entire registration fails. See *Smith v. Reynolds*, 3 O. G., 214.

73. MANNY & CO.

June 22, 1877. 17 MS. D., 155.

DOOLITTLE, Acting Commissioner:

Unnecessary to Mention Every Species of Goods Included in a Large Class.—Applicants state they are engaged in the manufacture of agricultural implements generally. *Held*, that it was unnecessary to mention every particular description of goods comprised in such class.

74. LISNER.

February 14, 1878. C. D. 1878, 46.

DOOLITTLE, Acting Commissioner:

“Fancy Goods,” too Broad.—The term “Fancy Goods,” which may include rubber, wood, ivory, etc., includes too many sub-classes to be allowed in one registration.

75. FITZPATRICK, DAVIS & CO.

March 25, 1878. 18 MS. D., 278.

DOOLITTLE, Acting Commissioner:

One Registration May Cover All Canned Goods. Canned goods may be considered as a single class of merchandise, and one registration may cover all kinds of canned goods.

76. DIBBLE MFG. CO.

July 12, 1878. 18 MS. D., 428.

DOOLITTLE, Acting Commissioner:

Raw Material and the Articles Manufactured Therefrom.—A trade-mark should not be registered to cover a certain indurated blood compound and the various articles, such as door knobs, made therefrom.

77. BRAILLARD.

May 1, 1879. 19 MS. D., 394.

DOOLITTLE, Acting Commissioner:

“Sphinx and S. R. L.”—“Sphinx” on a Different Article. The representation of a sphinx and the letters S. R. L. may be registered for a liniment, notwithstanding the prior registration of the representation of a sphinx for bitters and other medicinal preparations, the marks being somewhat different and the class of goods to which they are applied also different. (See No. 277 for *fac-simile*.)

78. PALMER.

October 11, 1881. 22 MS. D., 386.

MARBLE, Commissioner:

Chewing Tobacco, Smoking Tobacco and Cigars.—The fact that a trade-mark had been registered for chewing and smoking tobacco should not prevent the registration of a similar mark for cigars.

79. MAW, SON & THOMPSON.

October 28, 1881. 22 MS. D., 403.

MARBLE, Commissioner:

“Druggists’ Sundries,” too Indefinite.—Applicants stated that “The particular classes on which we use the trade-mark are surgeons’ instruments and appliances, hair, tooth and nail brushes, feeding bottles and druggists’ sundries of all kinds.” *Held*, that the words “druggists’ sundries” signified no particular kind of goods, and applicants should be required to specify what was included under the term.

80. CRAWFORD & CRAWFORD.

April 29, 1882. 23 MS. D., 122.

MARBLE, Commissioner:

Baking Powder—Yeast.—The fact that a trade-mark had been registered for yeast should not preclude registration of substantially the same mark for baking powder.

81. AMES.

December 19, 1882. C. D. 1882, 10.

MARBLE, Commissioner:

“Albany Beef,” for Canned Sturgeon.—The words “Albany Beef” having long been used in Albany to designate *uncanned* sturgeon, should not be registered as a trade-mark for *canned* sturgeon, although applicant may have been the first to put up sturgeon in cans.

82. MITCHELL.

February 25, 1885. 27 MS. D., 335.

BUTTERWORTH, Commissioner:

“**Medicinal Plasters**”—“**Salve or Ointment.**”—A trade-mark for medicinal plasters should not be registered where the same trade-mark had been previously registered by another party for a salve or ointment which may be spread as plasters for external application.

83. NATIONAL PLASTER CO.

June 9, 1885. 28 MS. D., 187.

MONTGOMERY, Commissioner:

“**Medicinal Plasters**”—“**Medicinal Preparations for Nervous Diseases.**”—A trade-mark for “medicinal plasters” should not be registered when the same mark had been previously registered by another party for “medicinal preparations for nervous diseases.”

84. BALDWIN.

October 6, 1888. 38 MS. D., 279.

HALL, Commissioner:

Liquid and Solid Medicines.—The registered word “Cephaline,” used upon a headache *powder*, should not prevent the registration by another party of the word “Kephalline” on a *liquid* headache medicine.

85. KNIGHT.

October 25, 1888. 38 MS. D., 341.

HALL, Commissioner:

“**Rough on Dinner**”—“**Rough on.**”—The words “Rough on Dinner” as applied to *medicinal bitters* were properly refused registration in view of registration No. 10,866, showing “Rough on” as applied to *medicinal and toilet compounds*.

86. KYLE & CO.

October 7, 1891. 57 O. G., 274.

SIMONDS, Commissioner:

Prior Use by Another.—When a party has registered a trade-mark for an article and announced his intention to use it upon a similar article, it is incumbent upon an applicant who wishes to register a trade-mark for such similar article to show that the registrant has not used it thereupon. After the registration of a trade-mark for an article, a second trade-mark should not be registered for merchandise of substantially the same descriptive properties.

87. BEAVER MFG. CO.

June 6, 1892. 50 MS. D., 293.

FROTHINGHAM, Assistant Commissioner:

“Mixed Paints and Roofing Composition” — **“Roofing Material.”**—*Held*, that applicant's goods, which were “mixed paints and roofing composition,” were merchandise of substantially the same descriptive properties as “rolls of roofing material and roofing composition or materials put up in kegs,” etc., set forth in the reference.

88. SILVERS.

April 27, 1894. 67 O. G., 811.

SEYMOUR, Commissioner:

Division—One Registration May Embrace Several Different Articles.—There is no authority for requiring division of an application for the registration of a trade-mark to accord with the sub-divisions of the office classification.

89. NORTH DAKOTA MILLING CO.

January 2, 1896. 58 MS. D., 176.

FISHER, Assistant Commissioner:

“Breakfast Foods”—**“Flour.”**—The words “Cream of Wheat” having been registered for flour should not be registered to another party for breakfast foods, including cracked wheat, wheat grits, etc.

90. KAMPFE BROS.

February 13, 1896. 58 MS. D., 306.

FISHER, Assistant Commissioner:

"Cutlery"—"Safety Razors."—There was no question of the similarity of the registered mark and that of applicants. The registered mark was used on cutlery; applicants' on safety razors. Applicants urged that in 1876, the date of registry of the registered mark, safety razors were unknown and that they were unable to find on the market any article of cutlery bearing the registered mark. *Held*, that safety razors were included under cutlery, nor was there adequate proof that the registered mark was not on articles in the market. Registration refused.

91. HAVILAND.

June 5, 1896. 59 MS. D., 154.

FISHER, Acting Commissioner:

"Bronchial Lozenges"—"Herb Balsams and Extracts." While it may be said that bronchial lozenges and herb balsams and extracts are under the general class of medicines, they are not so closely related that one would be mistaken for the other. While, therefore, the word "Alpine" is registered for bronchial lozenges it may be also registered for herb teas, herb balsams and extracts.

92. WESTERN NEW YORK PRESERVING AND
MANUFACTURING CO.

June 6, 1896. 59 MS. D., 164.

FISHER, Acting Commissioner:

"Self-Raising Flour"—"Canned Corn."—The fact that the word "Hopkins" had been previously registered as a trade-mark for "a compound of flour made of wheat or other grain and other substances prepared so as to be self-raising when used in cooking," put up in paper bags or packages, should not preclude the registration of the same word for canned hulled corn put up in cans.

DESCRIPTIVE MARKS.

93. HAUTHAWAY & SONS.

April 24, 1871. C. D. 1871, 97.

LEGGETT, Commissioner:

“Beeswax Oil,” for Oil.—The word “Oil” being generic, and “Beeswax” doubtless intended to be more or less descriptive of the quality or nature of applicants’ oil, the words “Beeswax Oil” should not be registered as a trade-mark for oil.

94. ROBERTS.

May 17, 1871. C. D. 1871, 113.

LEGGETT, Commissioner:

“Razor Steel,” for Knives, Shears, etc.—The word “razor” being descriptive and “steel” a generic term, these words should not be registered as a trade-mark for knives, shears, etc.

95. BLAKESLEE & CO.

November 15, 1871. C. D. 1871, 284.

LEGGETT, Commissioner:

“Condurango Ointment, C. O.”—“Ointment” is a generic name and cannot be monopolized; “condurango” is the name of a South American plant, used in treating ulcerous formations; the two words used together are descriptive of quality and the mere addition of “C. O.” does not help the matter. The gist of the mark and the only thing the eye and ear would fix upon is “Condurango Ointment.”

96. PALMER.

November 16, 1871. C. D. 1871, 289.

LEGGETT, Commissioner:

"Invisible," for Complexion Powder.—The intention of this applicant in applying the word "Invisible" to a powder for beautifying the complexion is to indicate that the powder when applied to the skin is imperceptible or invisible. The word is evidently descriptive and not a legitimate trade-mark.

97. JOHNSON & CO.

September 12, 1872. C. D. 1872, 211.

THACHER, Acting Commissioner:

"Johnson's American Anodyne Liniment, Established A. D. 1810."—It is claimed that "Established A. D. 1810" is an arbitrary distinguishing mark and that by the addition thereof the whole is constituted a legal trade-mark; but it seems that the additional phrase indicates the date of the discovery of the liniment and to this extent it is descriptive. It would be unjust to give one person the monopoly of words used in a descriptive way to which others might have the same right.

98. JOHNSON & CO.

September 12, 1872. C. D. 1872, 211.

THACHER, Acting Commissioner:

"Parson's Purgative Pills, P. P. P."—This case is analogous to Blakeslee & Co., C. D. 1871, 284. The letters themselves would probably be regarded as a legal trade-mark, but when used in connection with the words of which they are the initials they lose the characteristics of an arbitrary device.

99. LAWRENCE.

January 4, 1875. 16 MS. D., 263.

SPEAR, Acting Commissioner:

"Dr. Piper's Paints."—The words "Dr. Piper's Paints" should not be registered as a trade-mark, since it consists only of a person's name and the article to which it is applied.

100. HOLMES.

July 15, 1875. 16 MS. D., 19.

SPEAR, Acting Commissioner:

"Burglar Alarm."—The words "Burglar Alarm" as applied to telegraphic apparatus on the doors and windows of buildings, intended to indicate the entrance of burglars, are purely descriptive and should not be registered as a trade-mark.

101. TURNER.

December 3, 1875. 16 MS. D., 172.

SPEAR, Acting Commissioner:

"Turner's Flavoring Syrup, Dessert Sauce or Beverage."—Whether the article to which this mark is applied be a syrup, sauce or beverage, it is purely descriptive and should not be registered.

102. DUNDAS, DICK & CO.

March 8, 1876. C. D. 1876, 73.

DUELL, Commissioner:

"Tasteless," for Medicine.—The word "Tasteless," associated with the letters D. D. & Co., should not be registered as a trade-mark for medicine.

103. SCHIMMEL & CO.

March 10, 1876. Endorsed.

SPEAR, Acting Commissioner:

"Fruit Butter."—The words "Fruit Butter" appear to be the natural and proper description of the article to which they are to be applied, and should not be registered as a trade-mark.

104. LAWRENCE & CO.

June 20, 1876. C. D. 1876, 155.

DUELL, Commissioner:

Descriptive Phrases in a Foreign Language.—The German words "Für Familien Gebrauch," signifying "For Family Use," should not be registered as a trade-mark.

105. ROACH.

August 9, 1876. C. D. 1876, 174.

DUELL, Commissioner:

"Croup Tincture," for Medicine.—The words "Croup Tincture" are descriptive as applied to medicines, and should not be registered.

106. GATES & SEVERANCE.

August 26, 1876. 17 MS. D., 115.

DOOLITTLE, Acting Commissioner:

"Shake," Mode of Applying to the Merchandise.—Any one is entitled to the use of the word "Shake" upon bottles the contents of which are to be shaken. Applicants contend that there is exceptional virtue in having the word *blown* in the bottle. If that be true, the name of any place, firm, or corporation might in that way be rendered a valid trade-mark, which is apparently absurd.

107. GLINES.

September 21, 1876. 17 MS. D., 148.

DUELL, Commissioner:

"Rubber Roofing," for Roofing Material.—The words "Rubber Roofing," as applied to roofing material of which rubber forms a constituent, are objectionable on account of descriptiveness. The contention that applicant's case should be regarded with special favor on account of his being the owner of the patent under which the roofing is made is of little force, as the rights of other patentees would be prejudiced if they were inhibited from designating their inventions by a title which is particularly appropriate.

108. DOLE BROS.

October 28, 1876. 17 MS. D., 187.

DOOLITTLE, Acting Commissioner:

"Egg Macaroni," for Macaroni.—Macaroni being sometimes made of eggs, the phrase "Egg Macaroni" is either descriptive or deceptive when applied to macaroni, and should not be registered as a trade-mark.

109. PRATT & FARMER.

November 27, 1876. C. D. 1876, 244.

DOOLITTLE, Acting Commissioner:

Representation of Goods.—The figure of a fish when applied to lines used for the purpose of fishing, and well known in trade as intended for that purpose, has no more arbitrary or fanciful signification than the figure of a boot in front of a shoe shop, or upon the article itself. Any maker of fish lines has the right to use the symbol instead of the word “fish.” (See No. 491 for *fac-simile*.)

110. WHEELER, MADDEN & CLEMSON MFG. CO.

March 22, 1877. 17 MS. D., 354.

DOOLITTLE, Acting Commissioner:

“Thin Back,” for Saws.—Whether the words “Thin Back” is or is not known to the trade as a technical term, it is simply a descriptive expression which any one has the right to use in describing a saw, and should not be registered.

111. GOODYEAR RUBBER CO.

April 25, 1877. C. D. 1877, 53.

DOOLITTLE, Assistant Commissioner:

“Crack-Proof,” for Rubber Goods.—The compound word “Crack-Proof” should not be registered as a trade-mark for rubber goods, since it is descriptive in character. That the term has been coined adds nothing to its value, invention not being necessary in the adoption of a trade-mark, and the coined term having no unusual signification.

112. WARBURG & CO.

August 25, 1877. C. D. 1878, 5.

DOOLITTLE, Acting Commissioner:

“Cachemire Milano,” for Silks.—The word “Cachemire” or “Cashmere” is not arbitrary as applied to silks; it would be the appropriate and only appellation for a fabric uniting the qualities of cashmere and silk. The word “Milano” or “Milan,” which by itself might be a fanciful term, as applied to silk becomes itself insignificant from its connection with a descriptive term.

113. EMPIRE MILL CO.

December 8, 1877. 18 MS. D., 153.

DOOLITTLE, Acting Commissioner:

"Fancy Snow White," for Flour.—The words "Snow White" as applied to flour is descriptive, and while the word "Fancy" standing alone might be considered arbitrary, it does not add to or detract from the force of the term "Snow White."

114. BATES.

December 24, 1877. Endorsed.

DOOLITTLE, Acting Commissioner:

"Kitchen Mineral," for Soaps.—It is well known that mineral soaps are composed partly of mineral or earthy substances for cleaning metallic ware. The words "Kitchen Mineral" are therefore either deceptive or descriptive. Any one has the right to use descriptive terms, and no one should be allowed under the guise of a trade-mark to mislead the public as to the nature or quality of the goods to which such mark may be applied.

115. ROGERS.

February 6, 1878. 18 MS. D., 208.

SPEAR, Commissioner:

"Rogers' Consumption Cure and Cough Lozenge."—The above words applied to a medical compound and sold in the form of a lozenge are purely descriptive, and should not be registered.

116. MOIT & CHANDON.

March 12, 1878. 18 MS. D., 259.

SPEAR, Commissioner:

"Sillery Mouseux Superieur," for Wine.—Applicant has previously registered the arbitrary matter presented, so it only remains to consider whether the above words constitute a lawful trade-mark. The word "Sillery" is a term

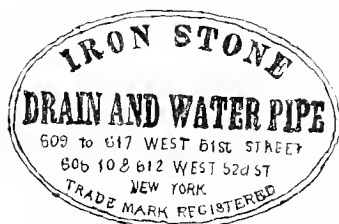
expressive of a certain quality of wine. "Moussoux and Superieur" are descriptive adjectives, likewise indicative of quality. I fail to find in them legitimate trade-mark matter, and registration of the mark must therefore be refused.

117. RADER & CO.

April 16, 1878. C. D. 1878, 67.

SPEAR, Commissioner:

"Iron Stone," for Drain and Water Pipes in Connection with an Oval Figure.



Purely descriptive words inclosed in a simple outline figure are not sufficiently distinctive, from the descriptive words used alone, to entitle the mark to registration.

Applicant's Mark.

118. KERR.

July 11, 1878. 18 MS. D., 427.

DOOLITTLE, Acting Commissioner:

"System Renovator," for Medicines.—The words "System Renovator" as applied to medicines for regulating all disorders of the system are not sufficiently arbitrary to point out individual origin or ownership, and should not be registered.

119. WEISMAN & SON.

July 30, 1878. 18 MS. D., 456.

SPEAR, Commissioner:

"Ansatz," Meaning "Compound," for Bitters—Mark in Use Before the Act of 1870.—The word "Ansatz," meaning "Compound," should not be registered as a trade-mark for bitters, since it is descriptive, especially as actually used being preceded by the word "Bitterer," meaning "very bitter," the two words together meaning "very bitter compound;" and it is of no importance that it was in use before the passage of the act of 1870, for it is not a "*lawful*" mark, and does not become so by virtue of the act in question.

T. M.—3.

120. BROWN & CO.

October 29, 1878. 19 MS. D., 68.

DOOLITTLE, Acting Commissioner:

"Prize Medal."—Any manufacturer who has obtained a prize medal upon his goods is entitled to denominate such goods "Prize Medal" goods. If the present applicants have at any time received a prize medal upon their soaps the term is descriptive. If they have not it is deceptive, and in either case should not be registered.

121. BROWN & CO.

October 31, 1878. Endorsed.

DOOLITTLE, Acting Commissioner:

"Gold Prize."—The words "Gold Prize" to me, and I believe to the public generally, would indicate that a gold prize had been given to the manufacturer of this article and its value would be enhanced thereby. If no prize had been obtained the words are deceptive. In either case they are not the subject-matter of a trade-mark.

122. ALDEN.

December 11, 1878. C. D. 1878, 142.

PAINE, Commissioner:

"Evaporated," for Articles of Food.—The word "Evaporated" indicates the mode of dessication employed in the preparation of food, and should not be registered as a trade-mark for articles of food.

123. SAFETY POWDER CO.

April 15, 1879. C. D. 1879, 117.

PAINE, Commissioner:

"Safety," for Powder, etc.—The word "Safety," applied to powder, etc., naturally suggests that it may be used with comparative safety and is therefore descriptive.

124. THOMPSON ET AL.

April 17, 1879. C. D. 1879, 119.

PAINE, Commissioner:

“Swing,” for Scythe Snath Sockets.—The word “Swing,” when applied to the socket of a scythe snath which moves on a pivot, indicates the peculiarity of the socket with sufficient precision to be descriptive.

125. RILEY.

April 19, 1879. 19 MS. D., 383.

PAINE, Commissioner:

“Soft Mash,” for Whiskey.—The words “Soft Mash” as applied to whiskey are descriptive and should not be registered.

126. CARBON PAINT CO.

May 2, 1879. Endorsed.

DOOLITTLE, Acting Commissioner:

“Carbon,” for Paints.—“Carbon” being a well-known ingredient of paints, the term is descriptive and therefore not a proper trade-mark.

127. WINTHROP.

May 26, 1879. Endorsed.

DOOLITTLE, Acting Commissioner:

“Stylographic,” for Ink.—The word “Stylographic” as applied to ink would naturally convey the idea that such ink was peculiarly adapted for use with stylographic pens and is therefore descriptive in character.

128. FRESE.

July 28, 1879. 20 MS. D., 54.

DOOLITTLE, Acting Commissioner:

“Incomparable,” with a Line Over It.—The word “Incomparable” is not fit subject-matter for a trade-mark, but if it were not a common practice to draw the attention of

the public to advertisements by printing black lines upon their face, the presence of such line over this word might give it a different significance than that of merely a descriptive word. It is also doubtful whether the *dash* renders the word sufficiently distinctive to give it trade-mark properties.

129. SMITH.

July 7, 1879. 20 MS. D., 18.

DOOLITTLE, Acting Commissioner:

“**Masonic,**” **Deceptive.**—The word “Masonic” is objectionable as a trade-mark for the reason that it is not sufficiently arbitrary. Its employment might not lead to actual deception, especially among the Masonic order, but it would have that tendency.

(This case was re-heard August 26, 1879, see 133 *seq.*, by Commissioner Paine, and the above decision followed.)

130. WHITAKER.

July 9, 1879. Endorsed.

DOOLITTLE, Acting Commissioner:

“**White,**” **on a White Package for Hams.**—It being settled law that a person cannot adopt as his trade-mark the color of the package in which his goods are enclosed, and as it is the practice of merchants to enclose their hams in white packages, the word “White” not being appropriate to the color of the hams themselves, it simply indicates to the world the same thing as the color of the package, and under such circumstances the word is not a valid trade-mark and should not be registered.

See No. 557 for *fac-simile*.

131. CANDEE & CO.

July 28, 1879 Endorsed.

DOOLITTLE, Acting Commissioner:

“**Sterling,**” **for Rubber Goods.**—The sense in which the word “Sterling” is objectionable is in that sense in which it is defined by Webster as “genuine, pure, of excellent quality.”

132. BROWN.

August 13, 1879. Endorsed.

DOOLITTLE, Acting Commissioner:

“**Standard.**”—“Standard,” according to Webster, means having a fixed or permanent value and is therefore descriptive in character.

133. SMITH, ISAAC L.

August 26, 1879. C. D. 1879, 234.

PAINE, Commissioner:

“**Masonic,**” for **Cigars.**—The word “Masonic,” applied to cigars, would be descriptive, connecting them in origin or use or adaptation with the Masonic order.

134. COHN.

August 26, 1879. C. D. 1879, 225.

PAINE, Commissioner:

“**Standard A,**” for **Cigars.**—The words “Standard A,” when applied to cigars, will obviously indicate that the cigars are in quality of the highest standard, and should not be registered.

135. COHN.

August 26, 1879. C. D. 1879, 225.

PAINE, Commissioner:

“**Druggists’ Sundries,**” for **Cigars.**—The words “Druggists’ Sundries” are descriptive of a class of goods in which druggists deal, which class includes cigars. The words therefore should not be registered as a trade-mark for cigars.

136. WEISS & CO.

January 15, 1880. 20 MS. D., 328.

PAINE, Commissioner:

“**Salvator,**” for **Beer, Not Blasphemous but Descriptive.**—The term “Salvator” as applied to beer is not blasphemous in character but is descriptive, inasmuch as printed

publications showed it to have been applied to beer made according to a certain formula in Munich, etc., many generations before its adoption by applicant.

(Upon a motion for rehearing on the above decision February 8, 1880, 20 MS. D., 413, Commissioner Paine *held* that the fact that applicant's beer had printed on its labels "Brewed from Canada Malt and Madison County Hops" did not obviate the descriptive character of the word "Salvator," since beer of that name being well known, any one who made beer according to the formula under which the "Salvator" beer was made had the right to call such beer "Salvator" beer.)

137. PARKER.

July 15, 1880. 21 MS. D., 244.

MARBLE, Commissioner:

"Parker's Bronchial Lung and Liver Pad Combined." The above words are not registrable under the statute, since all except "Parker's" are descriptive, and that word is merely applicant's name.

138. BRIGHAM.

April 15, 1881. C. D. 1881, 38.

MARBLE, Commissioner:

"Satin Polish," for Shoe Polish—Distinction Between Labels and Trade-Marks.—The words "Satin Polish" are a genuine, if imperfect, attempt to describe the leading characteristic of the goods to which they are attached. The proper test in distinguishing between trade-marks that savor of description and labels that imperfectly describe is to consider whether the public will, on the whole, regard the mark as an arbitrary symbol denoting only the origin or ownership of the goods or as an advertisement of some desirable quality of the goods themselves.

139. BASLEY & McALVANAH.

September 1, 1881. 22 MS. D., 331.

MARBLE, Commissioner:

"Mack's Milk Chocolate."—The words "Mack's Milk Chocolate" should not be registered as a trade-mark for Milk

Chocolate, which is prepared chocolate ready for immediate use upon the addition of water. (Amoskeag Mfg. Co. v. Spear, 2 Sand. S. C., 599; Corwin v. Daly, 7 Bosw., 222.)

140. RICE.

July 10, 1882. 23 MS. D., 188.

MARBLE, Commissioner:

“**Eclectic Liniment.**” — The words “Eclectic Liniment” are descriptive in character and not subject-matter for a trade-mark.

141. LUYTIES BROS.

August 19, 1882. 23 MS. D., 244.

STOCKBRIDGE, Acting Commissioner:

“**Special,**” for **Wines and Liquors.** — The word “Special” as applied to wines and liquors is indicative of grade and in this sense is descriptive in the same way that “A 1” or “XX” would be and should not be registered as a trade-mark.

142. AMS.

December 19, 1882. C. D. 1882, 10.

MARBLE, Commissioner:

“**Albany Beef,**” for **Canned Sturgeon.** — The words “Albany Beef,” having long been used in Albany to designate uncanned sturgeon, should not be registered as a trade-mark for canned sturgeon, although applicant may have been the first to put sturgeon in cans.

143. KIPLING.

July 25, 1883. C. D. 1883, 54.

MARBLE, Commissioner:

“**Cristalline,**” for **Artificial Stones.** — The word “Cristalline,” meaning “consisting of crystal, etc.,” should not be registered as a trade-mark for artificial stones or brilliants.

144. RAILTON.

February 14, 1884. 25 MS. D., 321.

BUTTERWORTH, Commissioner:

"Chili Colorow," for Table Sauce, etc.—The words "Chili Colorow," which is provincial Spanish for red pepper, should not be registered as a trade-mark for table sauce, pickles, etc., where the distinguishing characteristic of applicant's production is red pepper, and if the characteristic of the product is not red pepper the words are deceptive.

145. BURKE.

October 21, 1884. 26 MS. D., 328.

DYRENFORTH, Acting Commissioner:

"White Pine," for Cough Medicines.—The words "White Pine" as applied to liquid medicines for coughs, colds, etc., are descriptive in character, since they might be truthfully used by others to indicate that the product of their manufacture contained white pine, the gum of which is well known for its medicinal properties.

146. ATKINS & CO.

January 23, 1885. 27 MS. D., 163.

BUTTERWORTH, Commissioner:

"Silver Steel," for Saws.—The term "Silver Steel," having been generally employed to designate the finer grades of steel, cannot be exclusively appropriated as a trade-mark for saws.

147. MAY BROS.

January 26, 1885. 27 MS. D., 171.

BUTTERWORTH, Commissioner:

"Riz O. K."—"**Riz Extra.**"—The words "Riz O. K." are not anticipated by the previously registered words "Riz Extra" as a trade-mark for cigarette paper, since "Riz" means "Rice" and rice paper is considered the preferable

paper for cigarettes. The words "Riz Extra" do not constitute a valid trade-mark, but whether "Riz O. K.," meaning excellent rice paper, are descriptive in character is another matter, which this application does not present.

148. PERKINS & ERNST.

May 14, 1885. 28 MS. D., 93.

MONTGOMERY, Commissioner:

"Penny," Not a Valid Trade-Mark for Tobacco.—No one has a right to monopolize the word "Penny" as a trade-mark for tobacco, for even though the present applicant may not sell his tobacco at a penny a plug, someone else may decrease the size of a plug so as to be able to sell it at such a price and they would then have the right to denominate their tobacco "penny tobacco."

149. SHOUDY & SON.

June 11, 1885. 28 MS. D., 200.

MONTGOMERY, Commissioner:

"Wonderful," for Soap.—The word "Wonderful" is naturally descriptive of the object to which it is appropriately applied and expresses the fact that wonder or admiration is awakened by some quality or property belonging to it. If a soap should have an unusually excellent cleansing capacity, for example, it might appropriately be termed "wonderful" by its maker.

150. HUBBELL & LARRABEE.

April 20, 1886. 30 MS. D., 350.

MONTGOMERY, Commissioner:

"Cream Lunch," for Crackers.—The words "Cream Lunch" as applied to crackers fairly indicate to one's mind, whether true or not, that in the manufacture of such crackers cream was depended upon as an important ingredient. The words, therefore, are not a valid trade-mark.

151. ESPEY.

November 10, 1886. 32 MS. D., 140.

MONTGOMERY, Commissioner:

"Fragrant Cream." — The words "Fragrant Cream," as applied to a fragrant preparation creamy in appearance, are descriptive and should not be registered as a trade-mark.

152. CHESTER OIL CO.

January 21, 1889. 39 MS. D., 110.

MONTGOMERY, Commissioner:

"Our Brand," Not Registrable. — The words "Our Brand" being incapable of exclusive appropriation by any one person should not be registered as a trade-mark for oil. Any person who sells oil has the primary right to assert that he is selling his brand of oil.

153. EXCELSIOR SPRING CO.

August 20, 1890. 44 MS. D., 127.

FISHER, Assistant Commissioner:

"Ferro-Manganese," for Mineral Waters. — The words "Ferro-Manganese," being in common use to describe a compound of iron and manganese, should not be registered as a trade-mark for mineral waters.

154. REED.

September 24, 1890. 44 MS. D., 246.

MITCHELL, Commissioner:

"Tablet" Snuff. — Applicant had on file an application for a patent for snuff compressed into the form of flat disks like tablets. *Held*, that the registration of this word as a trade-mark for snuff would operate to prevent the sale of snuff in tablet form by those who could as truthfully as applicant say that their compressed snuff was in tablets, and registration therefore should be refused.

155. LICHTY.

May 6, 1891. 46 MS. D., 422.

MITCHELL, Commissioner:

"Headache Capsules."—The words "Headache Capsules," as applied to a medicine for curing headaches, have no fanciful or arbitrary character, but constitute ordinary descriptive language and should not be registered as a trade-mark.

156. ROGERS FENCE CO.

July 20, 1891. 47 MS. D., 399.

FROTHINGHAM, Assistant Commissioner:

"Superior Lawn Mower."—The words "Superior Lawn Mower" should not be registered as a trade-mark for lawn mowers, since they are not arbitrary and are incapable of exclusive appropriation.

157. BRUGGER.

August 29, 1891. 48 MS. D., 84.

FROTHINGHAM, Assistant Commissioner:

"Most Excellent."—The words "Most Excellent" being such that, from the very nature of the fact they are used to signify, others may employ with equal truth, and therefore have an equal right to employ for the same purpose, should not be registered as a trade-mark.

158. ROBERTSON.

December 9, 1891. 49 MS. D., 34.

FROTHINGHAM, Assistant Commissioner:

"Nerve Food."—The words "Nerve Food" should not be registered as a trade-mark for medicinal and food compounds. First, because they had been used long before applicant adopted them as descriptive of medicine; and second, because they are in themselves descriptive, being not unlike in this respect to such words as "Cough Candy," "Cough Remedy" or "Cough Confection." (See *Stoughton v. Woodward*, 39 Fed. Rep., 902.)

159. BOWE.

May 2, 1892. 50 MS. D., 168.

FROTHINGHAM, Acting Commissioner:

“Cherry Cocktail,” for Non-Alcoholic Beverages Deceptive. — The words “Cherry Cocktail” should not be registered as a trade-mark for non-alcoholic or temperance beverages, because the word cocktail denotes a drink the principal ingredient of which is alcoholic liquor.

160. JOHNSON.

August 13, 1892. 50 MS. D., 25.

FROTHINGHAM, Acting Commissioner:

“Tamarac Balsam.” — “Tamarac Balsam” is familiar to every one in the region where that balsam abounds, but applicant stated that his balsam contained no tamarac but was made of cherry bark, ipecac, etc. *Held*, that registration should be refused on the ground of deception, citing *Man. Med. Co. v. Wood*, 108 U. S., 218.

161. NEW ENGLAND WHALEBONE MFG. CO.

August 31, 1892. 51 MS. D., 71.

FROTHINGHAM, Assistant Commissioner:

“Premium,” Descriptive or Deceptive. — The word “Premium” is one commonly used by producers to express a well defined idea. This being true, others beside applicant have an equal right to employ it for the same purpose. Furthermore, if the applicant has not received a premium he is practicing a fraud upon the public and registration should be refused.

162. BRAND STOVE CO.

January 19, 1893. 62 O. G., 588.

SIMONDS, Commissioner:

“Famous.” — The word “Famous” being normally descriptive in its nature is not subject to registration as a trade-mark. No showing is made in this case which gives the word any other than its normal meaning.

163. BLOOD & CO.

February 25, 1893. 52 MS. D., 134.

FROTHINGHAM, Assistant Commissioner:

"Blood & Co.'s Enamel Finish."—The words "Blood & Co.'s Enamel Finish" should not be registered as a trade-mark for "paints for inside woodwork," because enamel paints are common in the art. Any person has a right to use the phrase to designate a finish coat of paint which has a surface resembling enamel. Since these words cannot constitute a trade-mark by themselves, they cannot be made to do so by annexing the name of the proprietor thereto.

164. CLINTON WIRE CLOTH CO.

April 10, 1893. 52 MS. D., 253.

FROTHINGHAM, Acting Commissioner:

"Silver Finish."—The words "Silver Finish" refused registration as a trade-mark for wire netting and wire cloth, on the ground that they were either descriptive or deceptive.

165. STOKES.

June 1, 1893. 64 O. G., 437.

FISHER, Assistant Commissioner:

"Splendid."—The registration of the word "Splendid" as a trade-mark for flour refused upon the ground that it is not arbitrary or fanciful.

166. PEW & SON.

June 29, 1893. 52 MS. D., 443.

FISHER, Assistant Commissioner:

"Unrivalled."—The word "Unrivalled" should not be registered as a trade-mark for preserved fish, as it is an ordinary advertising term implying excellence.

167. CELLULOID CO.

June 29, 1893. 52 MS. D., 440.

FISHER, Assistant Commissioner:

"Zylonite."—The word "Zylonite," having been in use before its adoption by applicant as a trade-mark for plastic materials composed in part of pyroxyline, should not be registered as a trade-mark.

168. PATTBERG & BROS.

August 1, 1893. 53 MS. D., 49.

FISHER, Assistant Commissioner:

"The Favorite."—The words "The Favorite" should not be registered as a trade-mark, since the intention of the applicants in the use of the words seems to be not to indicate origin or ownership, but that their goods are the most popular, *the favorites*, with the public. Any other manufacturer has the right to use these words on his goods, and in fact his assertion may be true while that of the present applicant may not.

169. CHRISTENSEN.

December 9, 1893. 53 MS. D., 368.

FISHER, Assistant Commissioner:

"Surefit."—The word "Surefit" should not be registered as a trade-mark for patterns, for although it may be said that the patterns themselves do not fit, it cannot be doubted that it is intended to convey the meaning to purchasers that garments cut from these patterns are true fitting.

170. STANDARD FURNITURE CO.

January 31, 1894. 54 MS. D., 67.

FISHER, Assistant Commissioner:

"Standard."—The word "Standard" refused registration as a trade-mark for desks, although applicant showed it had been previously registered for other articles. The refusal is based on the ground that the word is descriptive as defined in the Century Dictionary. A distinction drawn between *descriptive* words such as "Rock and Rye" (Van Beil v. Prescott, Am. Trade-Mark Cases, 314), and *suggestive* words such as "Anti-Washboard" (O'Rourke v. Central City Soap Co., C. D. 1886, 217).

171. BUTLER.

February 16, 1894. 54 MS. D., 130.

FISHER, Assistant Commissioner:

"Peerless."—The word "Peerless," as defined in the Century Dictionary, is descriptive and should not be registered as a trade-mark for tea.

172. GROVE.

May 25, 1894. 67 O. G., 1447.

FISHER, Assistant Commissioner:

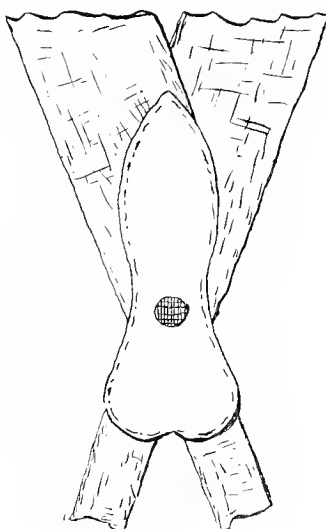
"Bromo Quinine," Descriptive or Deceptive.— "Bromo Quinine" is a compound word descriptive of the preparation to which it is applied, indicating that it contains bromine or a bromide and quinine. If it does not contain these ingredients it is deceptive and in either case not a valid trade-mark.

173. SILVERMAN & CO.

March 30, 1895. 56 MS. D., 319.

SEYMOUR, Commissioner:

"Gauze" Suspenders.—The word "Gauze" is descriptive of suspenders which have inserted in the *heart* of the suspenders a piece of wire gauze, and should not be registered as a trade-mark.



Applicant's Mark.

174. SILVERMAN & CO.

March 30, 1895. 56 MS. D., 316.

SEYMOUR, Commissioner:

"Scientific" Suspenders.—The word "Scientific" is in a secondary and somewhat illegitimate sense descriptive of suspenders which have as a characteristic feature a piece of wire gauze inserted in what is called the "heart" of the suspenders to make them stronger. In this respect this word differs from coined words intended to suggest the composition, quality or characteristic of an article, but not to define it by the employment of well-known words in common use.

175. WILLIAMS & CO.

July 6, 1895. 57 MS. D., 152.

FISHER, Assistant Commissioner:

"Hygienic," for White Oats.—The word "Hygienic" as applied to white oats is descriptive, meaning that the goods have health-giving qualities (see *Jaras Hygienic Underwear Co. v. Simons*, 58 O. G., 1095) and should not be registered as a trade-mark.

176. HORNED.

September 6, 1895. 57 MS. D., 453.

FISHER, Acting Commissioner:

"Astringent Pencil," Descriptive.—The words "Astringent Pencil," applied to a medicinal article in the form of a stick or cylinder, *held* to be descriptive.



177. YUNG.

September 13, 1895. 57 MS. D., 479.

FISHER, Acting Commissioner:

"Common Sense," for Weather Strips.—The words "Common Sense," when applied to weather strips, mean "constructed according to common sense principles or good judgment," and should not be registered as a trade-mark.

178. DE MOVILLE & CO.

October 4, 1895. 58 MS. D, 14.

FISHER, Acting Commissioner:

"Crushed Roses," Descriptive or Deceptive.—The words "Crushed Roses" as a trade-mark for perfumery are either descriptive, or if, as alleged, the perfumery is not made of crushed roses, they are deceptive and should not be registered.

179. SUCCESS REMEDY CO.

October 25, 1895. 58 MS. D., 53.

FISHER, Acting Commissioner:

"Success," for a Medical Compound.—The word "Success" as applied to a medical compound is a common descriptive or advertising term and should not be registered as a trade-mark.

180. LORD & TAYLOR.

November 4, 1895. 58 MS. D., 78.

FISHER, Acting Commissioner:

"Doubly Woven Finger Tips," for Gloves.—The words "Doubly Woven Finger Tips" being descriptive of gloves, and the word "Formosa" being geographical, the phrase "The 'Formosa' Doubly Woven Finger Tips" should not be registered as a trade-mark for gloves.



The "Formosa"
Doubly Woven
Finger Tips.

Applicant's Mark.

181. ANDREWS.

December 20, 1895. 58 MS. D., 144.

FISHER, Acting Commissioner:

"Cold Tea," for Medical Compound.—The words "Cold Tea" as applied to a medical compound in the shape of a powder is either descriptive or misleading and should not be registered as a trade-mark.

182. NORTH DAKOTA MILLING CO.

January 2, 1896. 58 MS. D., 176.

FISHER, Assistant Commissioner:

"Cream of Wheat," for Breakfast Foods.—The words "Cream of Wheat" mean either that the best part of the wheat is used or that the best wheat is selected for use, and should not be registered as a trade-mark for breakfast foods.

183. BROOKS.

January 20, 1896. 58 MS. D., 217.

FISHER, Assistant Commissioner:

"Hone-Strop," for Razor Strops.—The compound word "Hone-strop" is descriptive as applied to razor strops, in that it implies that the article on which it is used possesses the properties of a hone and a strop.

184. PETERS CARTRIDGE CO.

January 20, 1896. 58 MS. D., 229.

FISHER, Assistant Commissioner:

"Prize."—The word "Prize," defined in the dictionary as "worthy of a prize, that has gained a prize," is descriptive in character and should not be registered as a trade-mark for ammunition.

185. KNY.

January 21, 1896. 58 MS. D., 238.

FISHER, Assistant Commissioner:

"Steel Porcelain," for Enameled Ware.—The words "Steel Porcelain" as applied to enameled metal wares is descriptive in character and should not be registered as a trade-mark, the article upon which it is used being steel covered with enamel.

186. SIPHER & FRIEDMAN.

January 21, 1896. 58 MS. D., 231.

SEYMOUR, Commissioner:

"Superior Coffee Helper," Descriptive.—The words "Superior Coffee Helper" as a trade-mark for a coffee substitute should not be registered, because descriptive in char-

acter, "Superior" referring to the quality and "Coffee Helper" meaning that the substance is either a substitute for the coffee or adds something to it.

187. AMERICAN WRINGER CO.

February 27, 1896. 58 MS. D., 349.

FISHER, Assistant Commissioner:

"Superior."—The word "Superior" should not be registered as a trade-mark for clothes wringers, the same word having been refused registration in *ex parte* Rogers Fence Co., 47 MS. D., 399.

188. GANZ.

March 26, 1896. 58 MS. D., 466.

FISHER, Acting Commissioner:

"Don't Cook Out," for Flavoring Extracts.—The words "Don't Cook Out" when applied to flavoring extracts mean that the extracts are of such a character that they may be added to articles of food before cooking and that after cooking the extract will still be present in the food. The words are therefore descriptive and should not be registered.

189. PACKER.

April 24, 1896. 59 MS. D., 29.

FISHER, Acting Commissioner:

"Solvent," for Medicines.—Many of the medicines to which the above word is to be applied have a certain amount of "solvent" or dissolving power. The word is therefore descriptive in character and should not be registered.

190. BROMO-CELERY CO.

May 2, 1896. 59 MS. D., 73.

SEYMOUR, Commissioner:

"Bromo-Celery," for Medicines.—Bromid is a compound formed by the union of bromin with another element or an organic radical. Chemists in naming such a compound contract the word "bromin" or "bromid" to "bromo," and the

latter word has grown into general use to indicate such element in such a compound substance. For example, when photographic plates are impregnated with bromids and iodids they are said to be "bromo-iodized." This being so, the words "*Bromo-Celery*" as applied to a medicine are either descriptive or deceptive and should not be registered.

191. GROVE.

May 4, 1896. 59 MS. D., 75.

FISHER, Assistant Commissioner:

"**Bromo-Quinine,**" for **Medicine.**—This is a rehearing of a former decision (May 25, 1894) refusing registration of "Bromo-Quinine" as a trade-mark for medicines. That decision was based in part on *Keasby v. Brooklyn Chemical Works* (trade-mark record April 19, 1893), but since the decision of May 25, 1894, the Court of Appeals of New York has reversed the decision in the court below in *Keasby v. Brooklyn Chemical Co.* That case, however, is not decisive of the present case. The present case is similar to *ex parte Bromo-Celery Co.*, 59 MS. D., 73. Moreover, the court in the *Keasby v. Brooklyn Chemical Co.* case was evidently influenced by the question of fraud. Registration refused.

192. COUNTIS & CO.

June 6, 1896. 59 MS. D., 157.

FISHER, Acting Commissioner:

"**Roman Punch,**" for **Non-Alcoholic Drink.**—The Century Dictionary defines "Roman Punch" to be "a water ice flavored usually with lemon and mixed with rum or other spirit." These words cannot therefore be appropriated as a trade-mark for non-alcoholic drinks; citing *ex parte Rowe*, 50 MS. D., 168.

ESSENTIAL FEATURES.

193. VOLTA BELT CO.

June 26, 1875. C. D. 1875, 84.

THACHER, Commissioner:

Application Must Distinguish Between Essentials and Non-Essentials.—Applicant states that its trade-mark is “A symbol consisting of the words ‘electricity is life,’ placed beneath clouds from which lightning flashes proceed, the whole arranged generally as shown in the *fac-simile*.” In addition to these features the *fac-simile* shows the figure of a globe, to which no allusion is made, and presumably, therefore, this is a non-essential feature; but the description ought not to be left open to presumptions when a few words can make the matter perfectly clear.

194. KNOX.

October 12, 1877. 18 MS. D., 90.

SPEAR, Commissioner:

Certainty in Essential Features Unnecessary.—Applicant stated his essential features to be the representation of two birds. His statement set forth that the exact shape of the birds, whether with wings closed or displayed, was immaterial. *Held*, that the mark was set forth with sufficient distinctness, and that if the statement did not misrepresent the mark or describe it too broadly, or failed to describe it distinctly so that injury might arise to the public, the office should not be particular to inquire into other matters which might be considered mere matters of taste.

195. HERNSHEIN & BRO.

November 13, 1878. 19 MS. D., 95.

DOOLITTLE, Acting Commissioner:

“Little Brown Jug.”—“Jug” May Be the Essential Feature.—Applicants’ *fac-simile* contains the words “Little Brown Jug,” but in their statement they allege that their trade-

mark consists of the arbitrary word "Jug," to be used usually in connection with the words "Little Brown," but that those words may be omitted or other words substituted. The examiner held that the public would naturally infer that the whole phrase constituted the trade-mark and that the applicant should so state. *Held*, that the mark might be registered as presented.

196. FARNUM & CO.

August 9, 1880. C. D. 1880, 155.

MARBLE, Commissioner:

Definition of Essential Features.—The essential features of a trade-mark are those only which serve in whole or in part to distinguish the goods of the party by whom such mark is adopted, and it is not proper that anything should be described as essential which the courts would hold otherwise, as, for instance, the word "Lancaster," which is held to be geographically deceptive.

197. GANDY.

October 22, 1880. 21 MS. D., 407.

MARBLE, Commissioner:

Nothing but Arbitrary Features Should Be Incorporated in the Essential Features.—Applicant stated that his mark consisted of the figure of a coil of belting with a bale of cotton laid across it and the words "Gandy's Belting" printed upon the bale. *Held*, that the words "Gandy's Belting" could not properly be said to constitute an essential feature of the mark. (Farnham & Co., 18 O. G., 412.)

198. ADRIANCE, PLATT & CO.

November 29, 1881. C. D. 1881, 52.

MARBLE, Commissioner:

"Adriance," What Should Not Be Included in Essential Features.—The fact that "Adriance" is not the full name of the firm, but only of one member, does not establish for the

name an arbitrary character, nor confer upon the firm an exclusive right to use it as against others of the same name. This being so, the name should not be included as an essential element of applicant's mark.

199. PIERCE.

January 4, 1882. 23 MS. D., 16.

STOCKBRIDGE, Acting Commissioner:

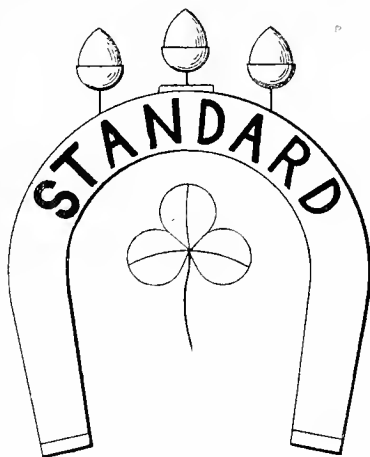
What May Be Registered.—The words “W. Baker & Co.'s Chocolate, Double Vanilla, Dorchester, Mass.,” are not by themselves proper subject-matter of a trade-mark, but no objection is seen to applicant's covering in this registration the various pictorial features of his label; but the doctrine is well settled that descriptive words cannot be included in a recital of the essential portion of a trade-mark. (Farham & Co., 18 O. G., 412; Adriance, Platt & Co., 20 O. G., 1820.)

200. METROPOLITAN WATCH CO.

October 4, 1890. 44 MS. D., 272.

MITCHELL, Commissioner:

Essential Features “An Acorn,” when Three Acorns Were Shown.—The applicant's trade-mark consisted, among other things, of a horseshoe surmounted by three acorns. It sets up its essential features to be “the figure of an acorn.” *Held*, that the claim should be for what was shown, viz.: three acorns surmounting a horseshoe. The essential feature of a trade-mark is not that which the registrant elects to designate as such, but that which would strike the public mind as its most salient feature.



Applicant's Mark.

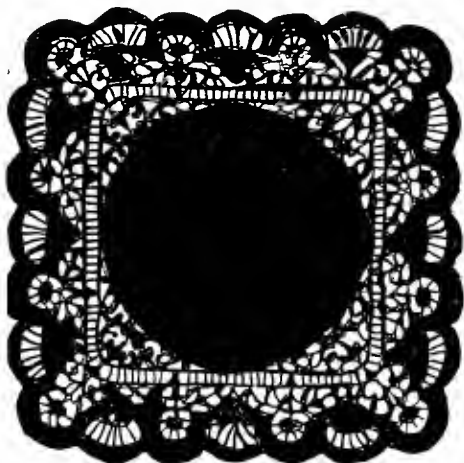
201. WOODBURY.

February 21, 1891. 46 MS. D., 14.

MITCHELL, Commissioner:

"The Representation of Lace"—Sufficiently Definite.

The statement that "My trade-mark (for whiskey) consists of the representation of lace. I usually employ it in the form of a label of gilt paper, square in shape, with a circular central unperforated portion as shown, but any or all of these features may be varied without altering the character of the mark, the essential feature of which is the representation of lace." *Held*, sufficiently definite and registration granted.



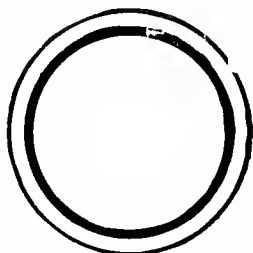
Applicant's Mark.

202. HUMBER & CO.

June 5, 1896. 59 MS. D., 147.

FISHER, Acting Commissioner:

Striped Cycle Tire—Definiteness.—Applicants' essential features were "A series of stripes having contrasting colors incorporated in the rubber of the tire or applied to the surface as a paint or stain." *Held*, the above to be a sufficiently definite statement of what the mark consisted, notwithstanding *ex parte* Adam Roth Grocery Co., 62 O. G., 315, etc., and that the mark was a valid one notwithstanding *ex parte* Landreth, 31 O. G., 1441; *Fleischman v. Starkey*, 25 Fed. Rep., 127, etc. Citing in support of the position that the mark was valid and sufficiently definite, *ex parte* Roxbury Carpet Co., 18 MS. D., 423, etc.



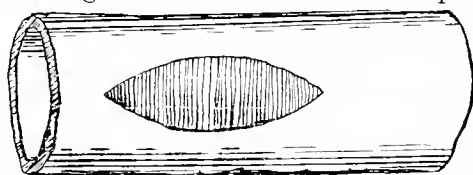
Applicant's Mark.

203. BOSTON WOVEN HOSE & RUBBER CO.

June 5, 1896. 59 MS. D., 150.

FISHER, Acting Commissioner:

What Is Not Sufficiently Definite.—Applicant states its essential features to be “A red or reddish figure of definite shape and limited dimensions, on, or local to, a portion of the tire having a definite outline.” The *fac-simile* shows a well-defined figure having in general a diamond shape, and to the registration of which when properly described the ex-



Applicant's Mark.

aminer has no objection. *Held*, that the case in its present form is too indefinite to be registered.

FRAUD.

204. AMERICAN SARDINE CO.

May 13, 1873. C. D. 1873, 82.

LEGGETT, Commissioner:

"American Sardines."—Registration should be refused the words "American Sardines" as a trade-mark to be placed on cases resembling sardine boxes but containing another kind of fish, they being calculated to deceive. These words have not the virtue of a new name, a coined word like "Cocaine," etc. They simply constitute a misnomer, and it is immaterial that on account of their large size an examination of the fish will readily undeceive the purchaser.

205. ROYAL BAKING POWDER CO.

April 11, 1874. 14 MS. D., 390.

THACHER, Acting Commissioner:

"Liebig."—The word "Liebig" being well known in this country as indicating certain preparations put up under receipts of the famous chemist Baron Liebig, its use by applicant is deceptive when applied to extracts where there is no pretense that such extracts are preparations of Liebig's, and the word should not under such circumstances be registered as a trade-mark.

206. SNYDER.

May 5, 1874. 14 MS. D., 412.

LEGGETT, Commissioner:

"Boston Dental Association."—The applicant, an individual, started business in Chicago and designates herself "Boston Dental Association," and asks registration of the words as a trade-mark. *Refused* on the ground that the phrase was either descriptive or deceptive and also objectionable because it was not used on merchandise of any kind.

207. GREEN.

September 27, 1875. C. D. 1875, 121.

SPEAR, Acting Commissioner:

“German Syrup,” Not Geographical.—If the syrup upon which this mark was placed were purely a German product, then such syrup would naturally be designated “German,” but obviously it is not and the words may be registered.

208. BROWN & CO.

October 29, 1878. 19 MS. D., 68.

DOOLITTLE, Acting Commissioner:

“Prize Medal.”—Any manufacturer who has obtained a prize medal upon his goods is entitled to denominate such goods “Prize Medal” goods. If the present applicants have at any time received a prize medal upon their soaps the term is descriptive. If they have not it is deceptive, and in either case should not be registered.

209. BROWN & CO.

October 31, 1878. Endorsed.

DOOLITTLE, Acting Commissioner:

“Gold Prize.”—The words “Gold Prize” to me, and I believe to the public generally, would indicate that a gold prize had been given to the manufacturer of this article and its value would be enhanced thereby. If no prize had been obtained, the words are deceptive. In either case they are not the subject-matter of a trade-mark.

210. SMITH.

July 7, 1879. 20 MS. D., 18.

DOOLITTLE, Acting Commissioner:

“Masonic,” Deceptive.—The word “Masonic” is objectionable as a trade-mark, for the reason that it is not sufficiently arbitrary. Its employment might not lead to actual deception, especially among the Masonic order, but it would have that tendency. (This case was reheard August 26, 1879, 20 MS. D., 114, by Commissioner Paine, and the above decision followed.)

211. FARNUM & CO.

August 9, 1880. C. D. 1880, 155.

MARBLE, Commissioner:

“Lancaster,” When Geographical Terms May Be Registered.—“Lancaster,” in connection with the symbol of a rose, as applied to goods made in Philadelphia, is geographically deceptive and should not be registered. Before any geographical name is registrable it must clearly appear that the place of that name is such a one that the word will be understood by the purchasing public as primarily fanciful and that manufacturers of like goods at such places cannot so mark their wares and claim the protection of our laws; and words calculated to deceive the public as to the place of manufacture should not be registered.

212. HOOPER & SONS.

March 29, 1883. 24 MS. D., 124.

MARBLE, Commissioner:

“Woodbury,” Geographical.—The name “Woodbury” should not be registered as a trade-mark for cotton duck, since Woodbury is the name of a well-known manufacturing village. It is unimportant whether applicants’ business is located there or elsewhere. In the first place the mark would be descriptive in the sense that it would indicate where the goods are manufactured, and in the second place it would be deceptive.

213. RAILTON.

February 14, 1884. 25 MS. D., 321.

BUTTERWORTH, Commissioner:

“Chili Colorow,” for Table Sauce.—The words “Chili Colorow,” which is provincial Spanish for red pepper, should not be registered as a trade-mark for table sauce, pickles, etc., where the distinguishing characteristic of applicant’s production is red pepper; and if the characteristic of the product is not red pepper, the words are deceptive.

214. BLOCH & CO.

July 9, 1887. 40 O. G., 443.

HALL, Commissioner:

“Knights of Labor,” for Whiskey — False Representation.—A trade-mark adopted by a manufacturer or dealer in distilled spirits at Milwaukee, Wisconsin, in commerce with Germany, which contains the legends “Knights of Labor Whiskey” and “K. of L. Distillery, Sour Mash,” and which clearly and distinctly refers the origin and ownership of the spirits so marked to the Knights of Labor of the United States, so that the public would be induced to purchase under the belief that they were manufactured by or under the auspices of that association, and therefore possess the excellence or superior qualities usually characterizing the productions or workmanship of artisans, workmen, etc., belonging to that association, and also from sympathy with its sentiments and principles, is fraudulent and unlawful, and must be denied registry. No rule can be adopted by which to determine what is or is not a lawful trade-mark. In many cases the misrepresentation may not appear upon the face of the trade-mark and accompanying application, and the office may not be in possession of the facts which would enable it to guard against the registry of a false trade-mark; but whenever it clearly and distinctly appears that the proposed trade-mark constitutes a misrepresentation of such a character that the courts would not protect, the office should refuse registration.

215. HOLMES & EDWARDS SILVER CO.

December 19, 1887. 36 MS. D., 11.

HALL, Commissioner:

“Mexican,” for Silverware.—The word “Mexican,” when applied to silverware, creates the presumption that the ware was manufactured in Mexico. The word, therefore, should not be registered.

216. CHICHESTER CHEMICAL CO.

August 3, 1889. 52 O. G., 1061.

MITCHELL, Commissioner:

“Red Cross.”—Registration of a trade-mark consisting essentially of “the red Greek cross on black ground in a diamond

shaped border and accompanied by the words Red Cross," for a medical compound, *refused*, since such a trade-mark would naturally lead the purchaser to suppose that he was purchasing an article which, if not manufactured by the well-known Red Cross Society, had at least its sanction or endorsement.

217. CANDY.

August 3, 1889. 40 MS. D., 474.

MITCHELL, Commissioner:

"Red Cross," Not Registrable.—While the Red Cross Society has not registered its symbol as a trade-mark, it is nevertheless a celebrated organization having to do with hospital supplies and medicines, and a trade-mark consisting of a red Greek cross, either with or without the words "Red Cross," would be calculated to convey the impression that the article was manufactured or approved by that society, and should not be registered.

218. BROWN & CO.

October 31, 1878. 19 MS. D., 69.

DOOLITTLE, Acting Commissioner:

"There's Money In It," for Soap.—It is no uncommon thing for dealers to insert coin in the merchandise they offer to the public, and from the office records it appears that these very applicants have so planned to prepare soap for the trade. To attach the information "There's money in it" to the soap bars either states the truth or else deceives. The law was not intended to foster any such doubtful practice.

219. FINLEY & BRUNSWIG.

February 25, 1892. 49 MS. D., 362.

FROTHINGHAM, Assistant Commissioner:

"Liebig's Diarrhœa Cordial."—The words "Liebig's Diarrhœa Cordial" should not be registered as a trade-mark for diseases of the stomach. First, because Liebig is the name

of a great food chemist, and the use of his name on a cordial would naturally lead the purchaser to suppose that the cordial was made by Liebig or according to his formula; and second, no one has the right to use Liebig's name without his consent.

220. BOWE.

May 2, 1892. 50 MS. D., 168.

FROTHINGHAM, Assistant Commissioner:

"Cherry Cocktail," for Non-Alcoholic Beverages, Deceptive.—The words "Cherry Cocktail" should not be registered as a trade-mark for non-alcoholic or temperance beverages, because the word cocktail denotes a drink the principal ingredient of which is alcoholic liquor.

221. JOHNSON.

August 13, 1892. 50 MS. D., 25.

FROTHINGHAM, Assistant Commissioner:

"Tamarac Balsam."— "Tamarac Balsam" is familiar to every one in the region where that balsam abounds, but applicant stated that his balsam contained no tamarac but was made of cherry bark, ipecac, etc. *Held*, that registration should be refused on the ground of deception; citing *Man. Med. Co. v. Wood*, 108 U. S., 218.

222. NEW ENGLAND WHALE BONE MFG. CO.

August 31, 1892. 51 MS. D., 91.

FROTHINGHAM, Acting Commissioner:

"Premium," Descriptive or Deceptive.—The word "Premium" is one commonly used by producers to express a well-defined idea. This being true, others besides applicant have an equal right to employ it for the same purpose. Furthermore, if the applicant has not received a premium he is practicing a fraud upon the public, and registration should be refused.

223. ZWACK & CO.

January 26, 1894. 55 MS. D., 24.

SEYMOUR, Commissioner:

“Red Greek Cross” — Written Concession from Red Cross Society in Hungary.—The refusal of the examiner to register a Red Greek Cross as a trade-mark for medicinal bitters, in view of *ex parte* Chichester Chemical Co., 52 O. G., 1061, affirmed, notwithstanding the fact that the applicants had a written concession from the Red Cross Society in Hungary to use the mark, since such concession does not extend beyond the boundaries of that country.

The above decision distinguished from *ex parte* King, C. D. 1889, 3.

224. GROVE.

May 25, 1894. 67 O. G., 1447.

FISHER, Acting Commissioner:

“Bromo Quinine,” Descriptive or Deceptive.—“Bromo-Quinine” is a compound word descriptive of the preparation to which it is applied, indicating that it contains bromine or a bromide and quinine. If it does not contain these ingredients it is deceptive, and in either case not a valid trade-mark.

225. DEMOVILLE & CO.

October 4, 1895. 58 MS. D., 14.

FISHER, Acting Commissioner;

“Crushed Roses,” Descriptive or Deceptive.—The words “Crushed Roses,” as a trade-mark for perfumery, are either descriptive, or if, as alleged, the perfumery is not made of crushed roses, they are deceptive and should not be registered.

226. ANDREWS.

December 20, 1895. 58 MS. D., 144.

FISHER, Acting Commissioner:

“Cold Tea,” for Medical Compounds.—The words “Cold Tea,” as applied to a medical compound in the shape of a powder, is either descriptive or misleading and should not be registered as a trade-mark.

GEOGRAPHICAL TERMS.

227. ARMESTEAD v. BLACKWELL.

June 14, 1872. C. D. 1872, 128.

LEGGETT, Commissioner:

Erroneous Registration to One Party.—The fact that B had obtained registration of the word “Durham” for tobacco would not justify a repetition of the blunder of granting registration to A. That word being the name of a place, cannot be exclusively appropriated by any one.

228. GREEN.

September 27, 1875. C. D. 1875, 121.

SPEAR, Acting Commissioner:

“German Syrup,” Not Geographical.—If the syrup upon which this mark was placed were purely a German product, then such syrup would be naturally designated German, but obviously it is not, and the words may be registered.

229. BECKER & CO.

April 4, 1876. 18 MS. D., 296.

SPEAR, Commissioner:

“Brandywine,” Geographical.—There being a group of flour mills situated in the valley of the Brandywine, actively engaged in the manufacture of flour since early in the century, the word “Brandywine” should not be registered as a trademark for flour.

230. WARBURG & CO.

August 25, 1877. C. D. 1878, 5.

DOOLITTLE, Acting Commissioner:

“Cachemire Milano,” for Silks.—The word “Cachemire” or “Cashmere” is not arbitrary as applied to silks; it would be the appropriate and only appellation for a fabric uniting

the qualities of cashmere and silk. The word "Milano" or "Milan," which by itself might be a fanciful term as applied to silk, becomes itself insignificant from its connection with a descriptive term.

231. WARD.

March 22, 1878. Endorsed.

DOOLITTLE, Acting Commissioner:

Circumstances which Would Not Constitute a Lawful Mark Prior to the Act of 1870.—Applicant's place of business was at Plymouth. He had used that word as a trade-mark prior to the Act of 1870. *Held*, that what circumstances could have constituted a lawful mark prior to the Act of 1870 must be gathered from the decisions of the courts, and this being the case, applicant had not established his right to the exclusive use of that word, since the decision of the court in *Canal Co. v. Clark*, 13 Wallace, 311, was against him.

232. MARSCHING & CO.

December 13, 1878. C. D. 1878, 143.

DOOLITTLE, Acting Commissioner:

"French," for Paints, Geographically Descriptive.—The French being well known for their skill in preparing fine paints, the word "French" should not be registered as a trade-mark for paints.

233. KNAPP.

May 6, 1879. C. D. 1879, 143.

DOOLITTLE, Acting Commissioner:

"London," Geographically Descriptive.—The name "London" is geographically descriptive when applied to preparations of food for animals.

234. BENICE.

July 7, 1879. 20 MS. D., 18.

DOOLITTLE, Acting Commissioner:

"Bombay," Registrable.—The word "Bombay" falls within the doctrine in the case of *Cornwall & Bro.*, 12 O. G., 312, and may be registered

235. OLIVER.

May 22, 1880. C. D. 1880, 196.

MARBLE, Commissioner:

“Raleigh,” Although the Name of a Distinguished Person, Geographically Descriptive.—Situated as “Raleigh” is, in the center of a tobacco-growing region, it is geographically descriptive as applied to tobacco, notwithstanding the fact that it is the name of a distinguished personage.

236. FARNUM & CO.

August 9, 1880. C. D. 1880, 155.

MARBLE, Commissioner:

“Lancaster”—When Geographical Terms May Be Registered.—“Lancaster” in connection with the symbol of a rose, as applied to goods made in Philadelphia, is geographically deceptive and should not be registered. Before any geographical name is registrable it must clearly appear that the place of that name is such a one that the word will be understood by the purchasing public as primarily fanciful, and that manufacturers of like goods at such place cannot so mark their wares and claim the protection of our laws, and words calculated to deceive the public as to the place of manufacture should not be registered.

237. COFFIN, ALTEMUS & CO.

March 10, 1882. 23 MS. D., 49.

STOCKBRIDGE, Acting Commissioner:

“Washington,” Geographical.—The word “Washington” as applied to cotton prints is geographical in character when used alone, but when used in connection with a portrait of General Washington it loses this geographical character. This case was reheard by Commissioner Marble (23 MS. D., 417) and registration of the word “Washington” alone was allowed, since it was well known that Washington was not a manufacturing city, and the public would not be misled into believing the goods were made there. (Green, C. D. 1875, 121; Cornwall, C. D. 1877, 85.)

238. HOMER & MASHETER.

September 23, 1882. 23 MS. D., 277.

MARBLE, Commissioner:

“Poole’s Island,” Owned by Applicant.—Where an island is distant from the main land at least one mile, and the applicants owned the entire island, except a small portion of it used as a light-house, *held*, that applicants might register the name of such island as a trade-mark.

239. HOOPER & SONS.

March 29, 1883. 24 MS. D., 124.

MARBLE, Commissioner:

“Woodberry,” Geographical.—The name “Woodberry” should not be registered as a trade-mark for cotton duck, since Woodberry is the name of a well-known manufacturing village. It is unimportant whether the applicants’ business is located there or elsewhere. In the first place the mark would be descriptive in the sense that it would indicate where the goods are manufactured, and in the second case it would be deceptive.

240. JENNINGS & SONS.

October 31, 1884. 26 MS. D., 327.

DYRENFORTH, Acting Commissioner:

“The Boston,” Geographical.—The words “*The Boston*,” as applied to hair nets, are geographically descriptive, and the fact that the definite article is prefixed to “Boston” does not obviate this objection.

241. HOLMES & EDWARDS SILVER CO.

December 19, 1887. 36 MS. D., 11.

HALL, Commissioner:

“Mexican,” for Silverware.—The word “Mexican,” when applied to silverware, creates the presumption that the ware was manufactured in Mexico. The word therefore should not be registered.

242. PROCTOR & GAMBLE.

August 17, 1888. 38 MS. D., 136.

HALL, Commissioner:

"Concord," Not Geographical.—While the word "Concord" is the name of several places it is also an English word in common use, meaning "accord," and may be registered as a trade-mark.

243. ROGERS & IRVIN.

October 17, 1888. 38 MS. D., 298.

VANCE, Acting Commissioner:

"Atlanta."—The word "Atlanta" appearing to have no other than a geographical meaning should not be registered as a trade-mark. (Upon a rehearing of this case December 14, 1888, 39 MS. D., 23, it was *held* that as the word Atlanta was the accusative form for Atlas, the word may be registered in accordance with the decision in *ex parte* Proctor & Gamble, 38 MS. D., 136.)

244. COLUMBIA SEWING MACHINE CO.

November 4, 1889. 41 MS. D., 228.

MITCHELL, Commissioner:

"Columbia Sewing Machine," Not Registrable as a Label.—Although the word "Columbia" is a part of applicant's name it should not be registered as a label, it having an arbitrary signification.

245. DOVER STAMPING CO.

March 21, 1890. 51 O. G., 1784.

FISHER, Acting Commissioner:

"Dover," Held to be Registrable.—The word "Dover" held to be registrable as a trade-mark, it not being used by applicant in its geographical but in a fanciful or arbitrary sense.

246. PROCTOR, JR.

June 6, 1890. 51 O. G., 1785.

MITCHELL, Commissioner:

Geographical Name.—The word “Cromarty,” being the name of a town in Scotland famous for its herring fisheries, is not registrable as a trade-mark for cured fish. Others with at least equal truth might use it upon packages containing the same articles of merchandise.

Statutory Basis of the Right to Registration.—The statutory basis of the right to registration is the fact that the trade-mark is used in foreign commerce or commerce with Indian tribes. Inasmuch as the applicant invokes the right as it stands related to foreign commerce, it cannot be said that the absence of Cromarty herring from the home market authorizes registration.

247. JENKINS.

September 5, 1890. 53 O. G., 759.

FISHER, Acting Commissioner:

Word “Vienna” as Trade-Mark for Flour.—The word “Vienna” declared entitled to registration as a trade-mark for flour, it appearing that no flour made in any town called “Vienna” in this country has been placed upon the market under the name “Vienna;” that no flour is upon this market coming from Vienna, Austria; that the word was arbitrarily selected by the petitioner, and that it is the custom in the flour trade to use fanciful names to designate flour, rather than the names of places of production.

248. HYDE & SONS.

January 19, 1891. 45 MS. D., 246.

FISHER, Assistant Commissioner:

“Berlin,” Not Geographical—Burden of Proof.—Where geographical names are used in a purely arbitrary sense they may be lawful trade-marks. Berlin is not noted as a place where the article (cotton goods known as Silesia) is produced. The applicants have no connection with that town, therefore no one would be deceived or wronged. The burden of proof to show that the place is so noted is upon the office.

249. MARSHALL & CO.

July 28, 1891. 47 MS. D., 412.

FROTHINGHAM, Assistant Commissioner:

“Kearney,” Not Geographical.—The word “Kearney,” which is the name of a small place near Newark, N. J., applicant’s place of business and the home of General Kearney, is sufficiently arbitrary to be registered as a trade-mark for thread, there being no other thread manufactory there.

250. AMERICAN SAW CO.

January 20, 1892. 58 O. G., 521.

SIMONDS, Commissioner:

“Trenton,” Geographical.—A mere geographical name is not registrable as a trade-mark unless from some unusual state of facts it has obtained an arbitrary or fanciful meaning of greater substance and value than its mere geographical sense. The underlying reason of the allowance of injunctions on geographical terms is not based on the trade-mark law pure and simple.

251. MISSISSIPPI GLASS CO.

July 24, 1893. 64 O. G., 713.

FISHER, Assistant Commissioner:

“Florentine,” Not Geographical.—The registration of the word “Florentine,” as a trade-mark for glass, granted, since Florence is not noted as a place for the manufacture of glass, and therefore no deception as to the quality of the manufacture can occur.

252. NAU.

July 24, 1894. 55 MS. D., 125.

FISHER, Assistant Commissioner:

“Turkish,” Geographical.—The word “Turkish” should not be registered as a trade-mark for a veterinary remedy, in view of the decision in *Columbia Mill Co. v. Alcorn*, 65 O. G., 1916, especially since Turkish horses are famous.

253. WILLIAM SCHMIDT BAKING CO.

July 27, 1894. 55 MS. D., 139.

FISHER, Assistant Commissioner:

“New England,” Geographical.—In view of the recent decision of the United States Supreme Court in *Columbia Mill Co. v. Alcorn*, 65 O. G., 1916, the words “New England” should not be registered as a trade-mark for biscuits, crackers, etc., as the essential element of exclusive right to its use is lacking.

254. JAMES LEFFEL CO.

August 25, 1894. 55 MS. D., 231.

FISHER, Assistant Commissioner:

“Columbia,” Geographical.—The word “Columbia” should not be registered as a trade-mark for water-wheels, as it is geographical in character. *Columbia Mill Co. v. Alcorn*, 65 O. G., 1916.

255. BAY STATE OPTICAL CO.

August 12, 1895. 57 MS. D., 315.

FISHER, Assistant Commissioner:

“Bay State,” Geographical.—The words “Bay State” are geographical in character, and should not be registered as a trade-mark.

256. CRAWFORD MFG. CO.

August 22, 1895. 57 MS. D., 380.

FISHER, Assistant Commissioner:

“Crawford,” Geographical and Name of Applicant. The word “Crawford” should not be registered as a trade-mark, since it is geographical in character and is also the salient part of the name of the applicant.

257. INDIANA BICYCLE CO.

August 23, 1895. 72 O. G., 1654.

FISHER, Assistant Commissioner:

“Waverly,” Registrable.—The word “Waverly,” while it is used to designate localities, yet it is not “merely a geographical name” in the sense employed by the Supreme Court in *Columbia Mill Co. v. Alcorn*, 65 O. G., 1916, and may be registered.

258. HENDLEY.

August 27, 1895. 72 O. G., 1654.

FISHER, Assistant Commissioner:

“Cloverdale,” Not Registrable.—The word “Cloverdale,” primarily, has a geographical meaning and should not be registered. (*Columbia Mill Co. v. Alcorn*, 65 O. G., 1916, followed.)

The classes of geographical names which may and may not be registered as trade-marks indicated.

259. BOWMAN.

September 13, 1895. 57 MS. D., 478.

FISHER, Acting Commissioner:

“Cedar Valley,” Geographical.—The words “Cedar Valley” come under the third class of geographical terms mentioned in *ex parte Hendley*, 72 O. G., 1654, and should not be registered.

260. BRUNSWIG.

October 23, 1895. 58 MS. D., 65.

FISHER, Acting Commissioner:

“Argyle,” Geographical.—The word “Argyle,” as commonly used, is geographical and should not be registered as a trade-mark.

261. LORD & TAYLOR.

November 4, 1895. 58 MS. D., 78.

FISHER, Acting Commissioner:

"Formosa Doubly Woven Finger Tips," for Gloves. The words "Doubly Woven Finger Tips" being descriptive of gloves, and the word "Formosa" being geographical, the phrase "The 'Formosa' Doubly Woven Finger Tips" should not be registered as a trade-mark for gloves. See No. 180 for *fac-simile*.

262. MELLWOOD DISTILLERY CO.

January 15, 1896. 58 MS. D., 205.

FISHER, Assistant Commissioner:

"Runymede," Not Geographical.—The name "Runymede," not being a well-known geographical term, and having a greater romantic significance, may be registered as a trade-mark for distilled liquors.

263. RUMSEY MFG. CO.

January 20, 1896. 58 MS. D., 218.

FISHER, Assistant Commissioner:

"Como," Not Geographical.—The word "Como" may be registered as a trade-mark, it having other than a geographical significance.

264. NICHOLAS.

January 21, 1896. 58 MS. D., 238.

FISHER, Assistant Commissioner:

"Berkeley," Geographical.—The word "Berkeley," being geographical, should not be registered as a trade-mark for whiskey.

265. CAMDEN KNITTING CO.

March 13, 1896. 58 MS. D., 416.

FISHER, Assistant Commissioner:

"Florence," Geographical.—The word "Florence" should not be registered as a trade-mark for knit goods, in view of *Columbia Mill Co. v. Alcorn*, 65 O. G., 1916.

266. HAVILAND.

June 5, 1896. 59 MS. D., 154.

FISHER, Acting Commissioner:

“Alpine,” Not Geographical.—The word “Alpine” has other meanings than “pertaining to or connected with the Alps.” It means very high, elevated, etc., and falls within the second class of cases referred to in *ex parte* Hendley, 72 O. G., 1654, and may be registered as a trade-mark.

INFRINGEMENT.

267. AMERICAN LUBRICATING OIL CO.

February 2, 1876. C. D. 1876, 56.

DUELL, Commissioner:

"Star," Representation of Same.—The word "Star" should not be registered as a trade-mark, in view of registration No. 772, showing the representation of a star embracing the letter "G."

American Lubricating Oil Co.
STAR

CYLINDER

OIL
CLEVELAND, OHIO.

Applicant's Mark.

GALENA



OIL.

Registration No. 772.

268. COGGIN, KIDDER & CO.

February 21, 1876. 16 MS. D., 342.

SPEAR, Acting Commissioner:

"Haxall," Same and Maltese Cross.—While applicants' mark and registration mark No. 1513, when placed side by side,

are markedly different, still the prominent word in each is "Haxall," and the addition by applicants of the maltese cross is not of sufficient importance to authorize registration.



Applicant's Mark.

HAXALL
NEW
196

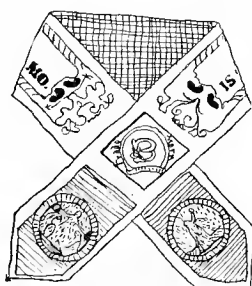
Registration No. 1513.

269. BUSH & CO.

June 21, 1876. C. D. 1876, 158.

DUELL, Commissioner:

Compound Mark Rejected on Two Previously Registered Marks.—The words “Centennial Isidor Bush & Co., St. Louis, Mo., in combination with the obverse and reverse of centennial medal,” refused registration on the previous registrations No. 3013 for the word “Centennial,” and No. 3009 for a symbol representing the reverse and obverse of a medal. It is not safe practice to permit the registration of a compound mark, one of whose distinguishing features has already been registered.



Applicant's Mark.



Registration No. 3013.



Registration No. 3009.

270. IMBS.

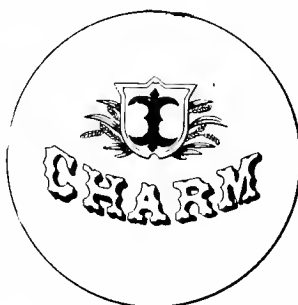
August 29, 1876. C. D. 1876, 195.

DOOLITTLE, Assistant Commissioner:

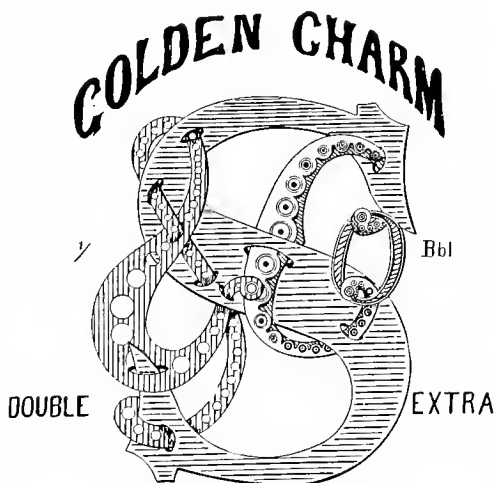
Combination Marks.—A trade-mark consisting of the letter “I” within a shield surrounded by wheat and situated above the word “charm” may be registered, notwithstanding the prior registrations Nos. 3208 and 884, showing the words “Golden Charm” and other features, and a shield with other features respectively. The question in cases of this kind is not whether persons are entitled to combine in one device independent devices that have been separately registered, but whether after such combination there is probability of the public being deceived thereby.



Registration No. 884.



Applicant's Mark.



Registration No. 3208.

271. PARK.

February 13, 1877. 17 MS. D., 282.

SPEAR, Commissioner:

"English Crown Gin"—"Golden Crown Gin"—"Crown Gin," being **Common Property.**—The registrations of "Golden Crown Gin" and "Iron Crown Gin" for whiskey show that the words "Crown Gin" are common property. This being true, the phrase "English Crown Gin" may be registered notwithstanding those registrations.

272. BENDEL.

February 26, 1877. 17 MS. D., 307.

SPEAR, Commissioner:

"Golden Star"—"Star."—The words "Golden Star" and the representation of a star of golden color should not be registered, in view of a prior registration showing the word "Star" and the representation of a star.

273. CORNWALL & BRO.

June 29, 1877. 17 MS. D., 466.

DOOLITTLE, Acting Commissioner:

"Star and Crescent"—"Star."—A star and crescent may be registered as a trade-mark for soap, notwithstanding the fact that a star had been previously registered for soap by another party.



Applicant's Mark.



Registered Mark.

274. BECKMAN, NOBLE & CO.

April 11, 1878 18 MS. D., 304.

DOOLITTLE, Acting Commissioner:

"Puffer," Refused on "Puff."—In view of the vast field from which arbitrary trade-marks can be selected, it seems rather strange that the word "Puffer" should have been selected when the word "Puff" had been previously registered.

275. CAIRE.

December 2, 1878. C. D. 1878, 131.

DOOLITTLE, Acting Commissioner:

"Swan"—"Black Swan."—The word "Swan" having been registered as a trade-mark for gin, registration of the words "Black Swan" should not be allowed to another for the same goods.

276. BRAILLARD.

May 1, 1879. 19 MS. D., 394.

DOOLITTLE, Acting Commissioner:

Sphinx and "S. R. L."—**Sphinx on a Different Article.** The representation of a Sphinx and the letters "S. R. L." may be registered for a liniment, notwithstanding the prior registration of the representation of a Sphinx for bitters and other medicinal preparations, the marks being somewhat different and the class of goods to which they are applied also different.



Applicant's Mark.



Registered Mark.

277. SCHOELLKER & GEHRING.

May 22, 1879. Endorsed.

DOOLITTLE, Acting Commissioner:

"Club Room"—"Club House."—The words "Club Room" should not be registered for cigars when "Club House" has been registered for the same goods. In view of the vast field of fanciful terms which may be drawn upon for proper trade-marks, when the resemblance is so close as in the present case, it is difficult to believe but that such resemblance was intended.

278. DOWIE & MOISE.

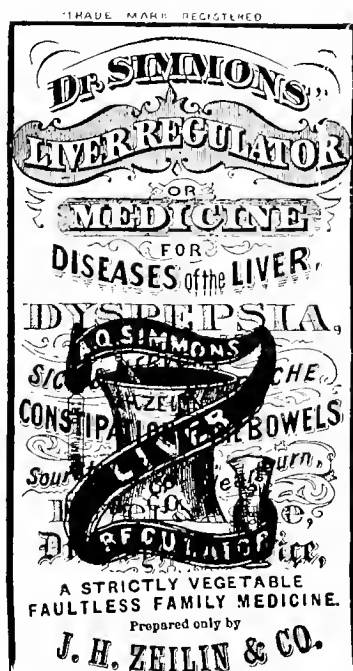
August 4, 1879. Endorsed.

DOOLITTLE, Acting Commissioner:

Applicants' trade-mark so nearly resembles that of Zeilin & Co., as to be likely to deceive the public.



Applicant's Mark.



Registration of Zeilin & Co.

279. SEARS & CO.

December 5, 1878. 19 MS. D., 129.

DOOLITTLE, Acting Commissioner:

"Queen"—"Queen's Own."—The word "Queen" may be registered, notwithstanding the prior registration of the words "Queen's Own" for the same goods; the lettering being of different form, the words having a different meaning and applicants' use going far back of the registrant's.

280. WEISERT BROS.

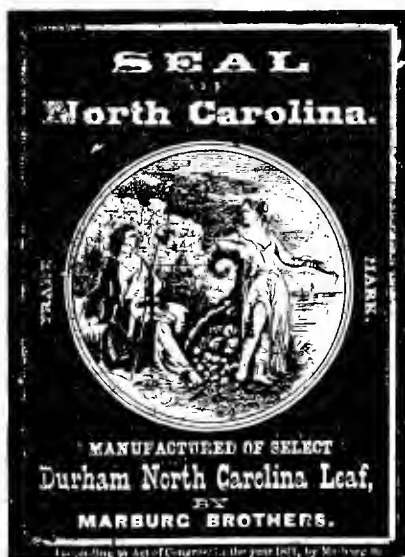
August 26, 1879. C. D. 1879, 226.

PAINE, Commissioner:

"Belle of North Carolina," etc.—The words "Belle of North Carolina" above the figure of a sitting female with packages of merchandise on either side, backed by a rock, the sea and a light-house, should not be registered in view of registration No. 2,055.



Applicants' Mark.



Registered Mark No. 2,055.

281. SMITH, ALANSON.

August 26, 1879. C. D. 1879, 222.

PAINE, Commissioner:

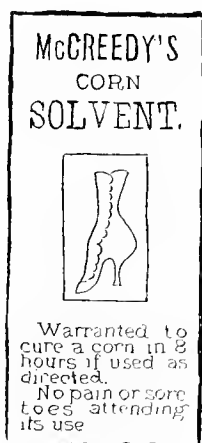
Compound Trade-Mark Rejected on Two Prior Registrations.—The letters and words “A. S. California Soap” with the symbols of a star placed between “Family” and “Soap,” and a monogram formed of the letters A. S., are excluded from registration as a trade-mark by the prior registrations of a star, No. 9, and the word California, No. 3,461.

282. MCCREEDY.

August 28, 1879. Endorsed.

DOOLITTLE, Acting Commissioner:

Applicant's mark is not anticipated by trade-mark No. 2,065.



Applicant's Mark.

PRUSSIAN SALVE**TRADE MARK**

Registration No. 2,065.

283. HERNSHEIM & BRO.

May 21, 1880. 21 MS. D., 98.

MARBLE, Commissioner:

“‘Alf and ‘Alf”—“ $\frac{1}{2}$ and $\frac{1}{2}$.” The words “‘Alf and ‘Alf” should not be registered as a trade-mark when “ $\frac{1}{2}$ and $\frac{1}{2}$ ” had been previously registered for the same goods. The expression “‘Alf and ‘Alf” is but a well-known corruption of “Half

and Half." The mere fact that the two marks when seen are distinguishable does not indicate a sufficient difference, for the brand will be as well known by its name as the peculiar appearance of the mark.



Applicants' Mark.

$\frac{1}{2}$ and $\frac{1}{2}$

Registered Mark.

284. BEMIS.

February 9, 1881. 22 MS. D., 42.

MARBLE, Commissioner:

"Toreros" — "Bull-fighter" — Section 4939, R. S. — The examiners' rejection of the word "Toreros" upon the previously registered word "Bull-fighters" overruled. Neither is applicant inhibited by section 4939, Revised Statutes, from receiving registration of this mark.

285. STRASBURGER & CO.

May 28, 1881. C. D. 1881, 23.

MARBLE, Commissioner:

Compound Trade-Mark.—The word "Time-keeper" being descriptive of watches, the registration of the words "Railway Time-keeper" and the representation of a locomotive should be refused registration in view of a prior registration of the word "Railway" for watches.

286. GINTER.

June 29, 1881. 22 MS. D., 236.

MARBLE, Commissioner:

“**Puff**”—“**Opera Puffs**.”—The word “Puff” should not be registered in view of the previously registered words “Opera Puffs.” (*Ex parte* Caire, C. D. 1878, 131.)

287. CLARK.

September 1, 1881. 22 MS. D., 327.

MARBLE, Commissioner:

“**Sun**”—“**Sunshine**.”—The word “Sunshine” should not be registered as a trade-mark in view of the prior registration of the word “Sun.” (*Ex parte* Caire, 15 O. G., 248; *Sawyer v. Kellogg*, 12 Reporter, 228.)

288. MAY BROS.

January 26, 1885. 27 MS. D., 171.

BUTTERWORTH, Commissioner:

“**Riz O. K.**”—“**Riz Extra**.”—The words “Riz O. K.” are not anticipated by the previously registered words “Riz Extra” as a trade-mark for cigarette paper, since “Riz” means “Rice” and rice paper is considered the preferable paper for cigarettes. The words “Riz Extra” do not constitute a valid trade-mark. But whether “Riz O. K.,” meaning excellent rice paper, are descriptive in character, is another matter which this appeal does not present.

289. WARNER & CO.

April 4, 1883. 24 MS. D., 151.

MARBLE, Commissioner:

“**Capcine**,” **Infringed by “Thapsine**.”—The word “Thapsine” should not be registered in view of the previously registered word “Capcine” for the same class of goods. (*Royal Baking Powder Co. v. McQuade, Co.*’s T. M. Manual, 671; *Sawyer v. Kellogg*, 7 Fed. Rep., 720.)

290. BARBER & HAMILTON.

August 7, 1883. 24 MS. D., 424.

MARBLE, Commissioner:

“Cereal” and Other Features—“Ceres.”—A trade-mark consisting of a figure of the rising sun and its rays in connection with ears of corn, sheaves of wheat and the word “Cereal” may be registered notwithstanding the prior registration No. 10,313, showing sheaves of wheat and the word “Ceres.”

291. WEST.

October 16, 1884. 26 MS. D., 322.

DYRENFORTH, Acting Commissioner:

“Ferroline”—“Terraline.”—The word “Terraline” too closely resembles the previously registered word “Ferroline” to be registered as a trade-mark for the same class of goods.

292. PALMER.

October 11, 1881. 22 MS. D., 386.

MARBLE, Commissioner:

“Nickel”—Representation of Same.—A representation of a five-cent nickel coin is essentially the same trade-mark as the word “Nickel.”

293. SHAEN & FITHIAN.

January 5, 1886. 30 MS. D., 1.

VANCE, Acting Commissioner:

“Arcana”—“Arcadia.”—The word “Arcana,” which means a secret, a mystery, is too nearly like the previously registered word “Arcadia,” which is the name of a mountainous country in Peloponnesus, to be allowed registration.

294. HOLMES & EDWARDS SILVER CO.

April 21, 1886. 30 MS. D., 358.

MONTGOMERY, Commissioner:

"Silver Ore" — **"Silveroid"** — **"Silverine"** — **"Silver Metal."** — The examiner rejected the words "Silver Ore" upon the three prior registrations, showing respectively "Silveroid," "Silverine" and "Silver Metal." *Held*, that neither of these references is so like the one under consideration as to render them, or either of them, calculated to impose upon an ordinary purchaser.

295. WING & OUTWATER.

April 27, 1886. 30 MS. D., 389.

MONTGOMERY, Commissioner:

"Odontoline" — **"Odontine."** — The word "Odontoline" should not be registered when "Odontine" had been registered for the same class of goods.

296. COLE & CO.

* November 24, 1886. 38 MS. D., 437.

VANCE, Acting Commissioner:

"Carbolisoap" — **"Carbolic," for Soap.** — The word "Carbolisoap," as applied to soap, was properly refused registration on the previously registered word "Carbolic," for soap, notwithstanding the fact the registration of the latter word was under the law of 1870. (See *Ex parte* Lyon, Dupuy & Co., 28 O. G., 191.)

297. CAMP.

September 7, 1887. 35 MS. D., 169.

VANCE, Acting Commissioner:

Effect of Registration Under Act of 1870. — As a trade-mark does not derive its validity from registration, but from its adoption and use, a trade-mark registered under the Act of 1870 is a pertinent reference. (*Ex parte* Lyon et al., 28 O. G., 191.)

298. PEMBERTON & HILL TOBACCO MFG. CO.

December 23, 1887. 36 MS. D., 28.

VANCE, Acting Commissioner:

“St. Nicholas”—**“Santa Claus.”**—The words “St. Nicholas” and the representation of St. Nicholas, in a specific form, allowed registration, notwithstanding the prior registration No. 14,304, showing the words “Santa Claus” and the representation of Santa Claus driving a team of reindeer.

299. MAGRUDER.

July 14, 1888. 37 MS. D., 348.

HALL, Commissioner:

“Jefferson Club”—**“Jefferson Pure Old Rye Whiskey.”** The words “Jefferson Club,” in connection with the medallion picture of Thomas Jefferson, may be registered notwithstanding the prior registration No. 3,206, showing the words “Jefferson Pure Old Rye Whiskey” and other minor details.

300. BALDWIN.

October 6, 1888. 38 MS. D., 279.

HALL, Commissioner:

Liquid and Solid Medicines.—The registered word “Cephaline,” used upon a headache powder, should not prevent the registration by another party of the word “Kephalline,” on a liquid headache medicine.

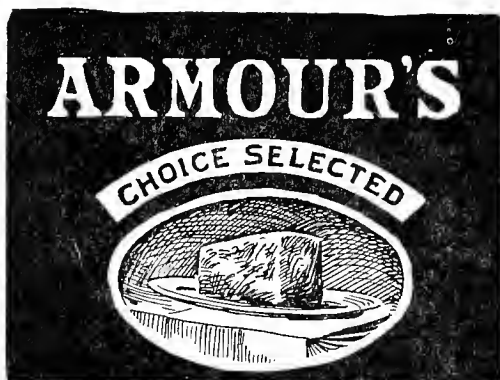
301. ARMOUR PACKING CO.

May 16, 1889. 40 MS. D., 192.

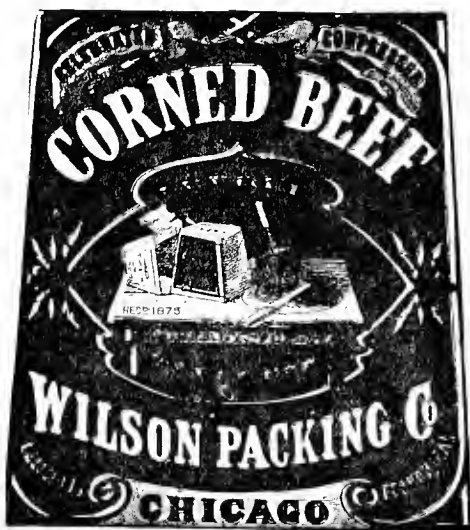
FISHER, Assistant Commissioner:

What Does Not Amount to an Infringement.—Registered trade-mark No. 2,935, showing a group of objects comprising a block of meat having several slices cut from it,

resting upon a plate, together with a knife and fork, an empty and filled can, do not constitute an anticipation of the applicant's trade-mark, which is stated to be "A block of beef upon a plate."



Applicant's Mark.



Registered Mark No. 2,935.

302. JONES, L. D.

August 17, 1888. 38 MS. D., 135.

HALL, Commissioner:

What Does Not Constitute Infringement.—The representation of an eagle, having upon its breast an oblong figure bearing the words “Von Graef,” is not anticipated by registration No. 6,752, showing a so-called fanciful crowned eagle, above which is printed “Dr. Aug. Kaiser’s Celebrated,” and below the figure the words “German Elixir.”



Applicant's Mark.



Registration No. 6,752.

303. KNIGHT.

October 25, 1888. 38 MS. D., 341.

HALL, Commissioner:

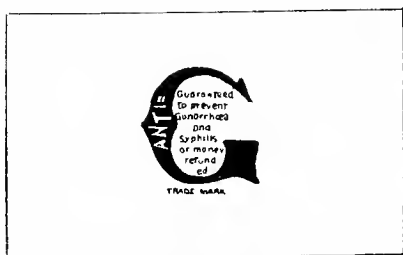
“Rough on Dinner”—**“Rough On.”**—The words “Rough on Dinner,” as applied to medicinal bitters, were properly refused registration in view of registration No. 10,866, showing “Rough on,” as applied to medicinal and toilet compounds.

304. KLYCE.

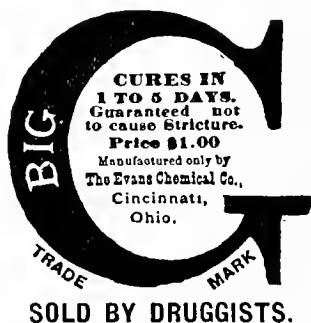
May 27, 1889. 40 MS. D., 221.

FISHER, Assistant Commissioner:

What Constitutes Infringement.—Applicant's trade-mark consists of the letter "G," having the word "Anti" printed upon it. The reference showed the letter "G" having upon it the word "Big." *Held*, that registration should be refused.



Applicant's Mark.



Registered Mark.

305. HILLYARD.

November 5, 1889. 41 MS. D., 240.

FISHER, Assistant Commissioner:

"Royal," Infringed by "Royal Dutch."—The words "Royal Dutch" infringe the previously registered word "Royal," especially as the word "Royal" is the distinctive part of the trade-mark, the word "Dutch" being merely descriptive.

306. BENDALL, HINES & CO.

January 3, 1890. 41 MS. D., 495.

FISHER, Assistant Commissioner:

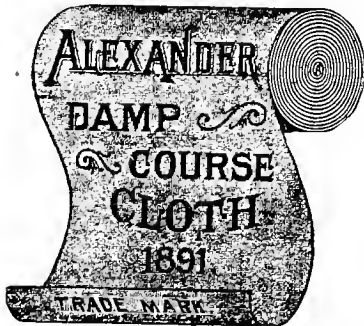
"Chew the Game Cock"—"Game" and Representation of a Cock.—Applicants first set forth their essential features as "Game Cock." Having been rejected on the registered trade-mark of Cameron & Co., they added the words "Chew the." *Held*, that "Game Cock" were applicants' essential features, and the addition of the words "Chew the" was of no consequence and registration should be refused.

307. ALEXANDER.

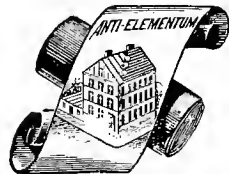
August 4, 1891. 47 MS. D., 458.

FROTHINGHAM, Assistant Commissioner:

What Constitutes Infringement?—Applicant states his essential features to be “the representation of the roll of cloth partly unwound.” His merchandise was damp, course cloth for building and roofing purposes. The reference was trade-mark to Reddaway & Co., No. 16,524, for “impregnated canvas, linen and cloth used as roofing material;” the trade-mark being a scroll having upon it the picture of a house and the words “Anti-elementum.” *Held*, that in view of the registered mark registration should be denied the applicant.



Applicant's Mark.



Registered Mark.

308. TAYLOR & SONS.

October 31, 1891. 48 MS. D., 348.

FROTHINGHAM, Assistant Commissioner:

“Taylor”—**“Old Taylor.”**—The words “Old Taylor” refused registration in view of a prior registration of “Taylor” for the same goods.

309. HALL.

November 27, 1891. 48 MS. D., 478.

FROTHINGHAM, Assistant Commissioner:

“Medical Lake”—**“Medical Lake Salt.”**—Applicant’s predecessor in business having beaten in an interference proceeding for “Medical Lake,” applicant should not be allowed to register as a trade-mark the words “Medical Lake Salt.”

310. COON.

February 3, 1892. 58 O. G., 946.

SIMONDS, Commissioner:

"Shield Brand"—Doubt in Favor of Registrant.—Whenever in the opinion of the office the thing offered for registry as a trade-mark is so nearly like some prior registered trade-mark as to be likely to lead to mistake or confusion, registration will be denied; and where there is doubt whether registration ought to be allowed, in view of a prior similar registration, the doubt should be resolved in favor of registrant. The registration, therefore, of the words "Shield Brand" on a shield should be refused, in view of the prior registration showing the same kind of a shield having thereon the word "American."



Applicant's Mark.



Registered Mark.

311. BOGARDUS.

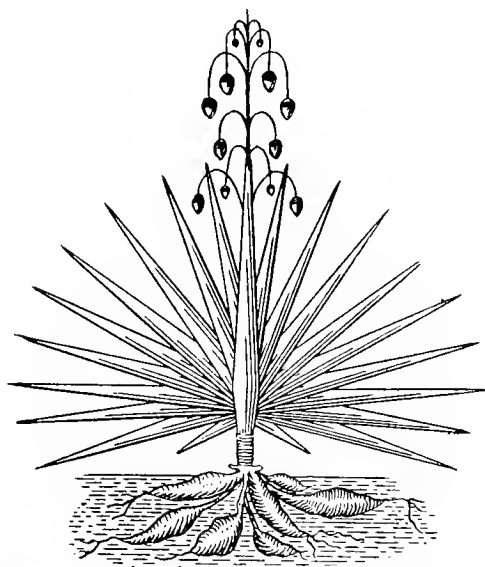
March 26, 1892. 50 MS. D., 2.

FROTHINGHAM, Assistant Commissioner:

Yucca Plant—**Spanish Bayonet Plant**.—The word “Yucca,” arranged over the representation of a Yucca plant, should not be registered when a prior registration (No. 15,776) for the same class of goods showed the representation of a Spanish bayonet plant, similar in appearance but having the earth partly removed from its roots, displaying potato-like tubers.

YUCCA

Applicant's Mark.

**AMOLE SOAP**

Registrant's Mark.

312. HURD & CO.

April 20, 1892. 59 O G., 1763.

FROTHINGHAM, Assistant Commissioner:

“Royal Vellum”—**“Royal Irish Linen.”**—Although the words “Vellum” and “Irish Linen” have well defined meanings when applied to paper, the word “Royal” associated with “Vellum” are not anticipated by the word “Royal” associated with the words “Irish Linen.”

313. BEAVER MFG. CO.

June 6, 1892. 50 MS. D., 293.

FROTHINGHAM, Assistant Commissioner:

Pictorial Representation of a Beaver.—Applicant's mark compared with the mark shown in the reference No. 2,147, and *held* to be anticipated thereby.



Applicant's Mark.



Registrant's Mark.

314. AMERICAN CHEMICAL CO.

January 19, 1893. 62 O. G., 588.

SIMONDS, Commissioner:

The word "**Magico**" *held* not anticipated by the word "**Magic**" already registered for use on a similar class of goods.

315. SPANOGLE & YEAGER.

April 14, 1893. Endorsed.

SIMONDS, Commissioner:

"Progresso"—**"Age of Progress."**—The action of the examiner refusing to register the word **"Progresso,"** in view of the previously registered mark No. 6,618, showing the words **"Age of Progress,"** in which **"Progress"** was in conspicuous letters, while **"Age of"** was in much smaller ones, affirmed.

PROGRESSO

Applicants' Mark.



Registered Mark No. 6,618.

316. CORNING & CO.

September 22, 1893. 53 MS. D., 190.

FISHER, Assistant Commissioner:

"M.V. Monarch"—**"Monarch Distilling Co."**—A trademark consisting of the words **"Monarch Distilling Co.,"** enclosed between concentric circles of broken lines and sur-
T. M.—7.

rounded by a circle of radiating scrolls, refused registration in view of the registered trade mark No. 13,860, the essential feature of which is the title "M. V. Monarch," the word "Monarch" being the distinguishing mark in each case.



Applicant's Mark.



Registration No. 13,860.

317. HEYER.

April 5, 1894. 54 MS. D., 252.

FISHER, Assistant Commissioner:

"**Antalgia**"—"Antialgia."—The word "Antalgia" should not be registered as a trade-mark when "Antialgia" had previously been registered.

318. SHORT, NERNEY & CO.

May 25, 1894. 54 MS. D., 457.

FISHER, Assistant Commissioner:

"I. C."—**"Representation of an Eye and C."**—A trade-mark consisting of the representation of a human eye and the letter C should not be registered in view of the prior registration of the letters "I C" as a trade-mark for the same goods. (Citing *Morrison v. Case*, 2 O. G., 544; *American Lu. Oil Case*, 9 O. G., 687; *Browne on Trade-Marks* (2d ed.), sec. 449, etc.)

319. COLMAN.

December 6, 1894. 55 MS. D., 44.

FISHER, Acting Commissioner:

Prior Invalid Registration.—The examiner stated that in his opinion the applicants have clearly established their right to register, but that he did not feel at liberty to grant such registration in view of a trade-mark registered November 10, 1894. *Held*, that registration should be granted.

320. BLANTON MILLING CO.

August 21, 1895. 57 MS. D., 372.

FISHER, Assistant Commissioner:

"Queen Bee"—**"Queen Bess"**—The words "Queen Bess" should not be registered as a trade-mark for flour in view of the previously registered mark "Queen Bee" for the same merchandise.

321. KIRBY v. McLAUGHLIN & CO. v. JOHNSON.

August 21, 1895. 72 O. G., 1785.

FISHER, Acting Commissioner:

Interference—Motion to Dissolve.—A trade-mark consisting of the words "Electric Light" alone, and another trade-mark consisting of these words accompanied by the representation of the upper part of an electric light bulb with zigzag rays emanating from it, conflict, the words being the "prominent, essential, and vital feature" of the marks, and a motion to dissolve the interference denied.

322. LAWN v. OHIO COFFEE & SPICE CO.

August 24, 1895. 73 O. G., 1136.

FISHER, Acting Commissioner:

"Capitol" — "Capital" and Flags. — The difference between "Capitol" and "Capital," the latter accompanied by a group of American flags, is too small to be noticed by the ordinary purchaser, and motion to dissolve the interference between the two is denied.

See No. 359 for *fac-similes*.

323. GOLD LEAF BAKING POWDER CO.

January 2, 1896. 58 MS. D., 179.

FISHER, Acting Commissioner:

"Gold Leaf" — "Silver Leaf." — The words "Gold Leaf" refused registration as a trade-mark for baking powder on the previously registered mark No. 25,778, consisting of the words "Silver Leaf" and the representation of a leaf, applicant having shown in his drawing as originally filed the representation of a leaf similar to the one shown in the reference. *Held*, that although he subsequently canceled the leaf from his case, it is presumed that, if registration is allowed, the applicant will still continue to use the representation of the leaf though not claimed as essential.



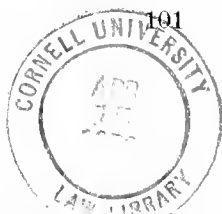
Applicant's Mark as Originally Filed.



Applicant's Mark as Amended.



Registered Mark No. 25,778.



324. SPENCER.

September 10, 1895. 57 MS. D., 491.

FISHER, Acting Commissioner:

Representation of an Indian Head and Words "North America," refused registration over the previously registered mark, No. 6,588, consisting of an Indian head and the words "Captain Jack."



Applicant's Mark.



Registered Mark.

325. STARACE.

January 18, 1896. 58 MS. D., 207.

SEYMOUR, Commissioner:

What Constitutes Infringement.—The representation of an eagle upon a globe with a branch and leaves at each side of the globe, and the word "Aquila," refused registra-

tion as a trade-mark for oil over the previously registered mark No. 23,776, consisting of the representation of an eagle resting upon a globe and grasping the branches of a cotton plant, the globe having printed thereon the name of the manufacturer.



Applicant's Mark.



Registered Mark.

326. FOOT, SCHULZ & CO.

January 31, 1896. 58 MS. D., 268.

FISHER, Assistant Commissioner:

What Constitutes Infringement.—The representation of a hand in a horizontal position with the name of the applicants, refused registration in view of the prior registration No. 7,346, showing a hand in a vertical position, having across it the word “Made” and other minor features.



Applicants' Mark.



Registered Mark.

327. PEW & SON.

February 7, 1896. 58 MS. D., 304.

FISHER, Assistant Commissioner:

“Royal-Salted-Codfish,” Refused on “Royal,” for Codfish.—The words “Royal-Salted-Codfish,” with hyphens between the words, should not be registered in view of registration No. 14,917, covering the word “Royal” for codfish.

328. STRAUSS, SACHS & CO.

February 14, 1896. 58 MS. D., 309.

FISHER, Assistant Commissioner:

“Emmet’s Faultless” — “Emmet’s Professional,” for Harmonicas.—The words “Emmet’s Faultless” should not be registered as a trade-mark for mouth harmonicas, when the words “Emmet’s Professional” had been previously registered by another.

329. NEW YORK POWDER CO.

June 5, 1896. 59 MS. D., 142.

FISHER, Acting Commissioner:

“**Blackdiamond**” — “**Diamond**.” — Applicant contends that the word “Blackdiamond,” being a common appellation for coal, has an entirely different meaning from the word “diamond” and should be registered for *blasting powder*, notwithstanding the prior registration of the word diamond for *explosives*. *Held*, that applicant had negatived all alleged differences by the representation of a cut diamond accompanying the word “blackdiamond,” instead of representing a piece of coal, and the class of explosives fairly included blasting powder. Registration refused.

INTERFERENCE.

330. ARMESTEAD v. BLACKWELL.

June 14, 1872. C. D. 1872, 128.

LEGGETT, Commissioner:

Erroneous Registration to One Party.—The fact that B. had obtained registration of the word “Durham” for tobacco would not justify a repetition of the blunder of granting registration to A. That word being the name of a place cannot be exclusively appropriated by any one.

331. STERNBERGER v. THALHEIMER & HERSCH.

February 8, 1873. C. D. 1873, 24.

THACHER, Acting Commissioner:

What Constitutes Priority of Adoption.—T. & H. employed the word “Centennial” in an experimental way about the first of March, 1872, but took no further steps with it for three months, except to have it registered. *Held*, that S., who adopted it and on March 12, 1872, and June 25, 1872, marked and put on sale twelve and forty-five dozen shirts respectively, should be awarded priority of adoption.

332. KIDD & CO. v. MILLS, JOHNSON & CO.

March 28, 1874. C. D. 1874, 28.

LEGGETT, Commissioner:

In Whom Trade-Mark Vests on Dissolution of Firm. Property in trade-marks is maintained by adoption and continued use. Upon the dissolution of a firm, in the absence of express disposition the right to them must be settled by operation of law. When a person ceases to use his trade-mark and consents to its use by another, he relinquishes his right to it. The same results follow when a firm discontinues the use of a trade-mark and a member of the firm succeeding to the business continues to use it.

333. SWIFT v. PETERS

May 8, 1877. C. D. 1877, 57.

DOOLITTLE, Acting Commissioner:

The Owner is He Who First Uses.—A trade-mark interference, unlike those in patent cases, has nothing to do with the question as to who was the first to conceive or suggest the mark, but who was the first to put it into actual practice.

334. HALL & CO. v. ATKINSON.

February 2, 1878. C. D. 1878, 42.

DOOLITTLE, Acting Commissioner:

"Calhoun" for Plows—Common Property.—The applicants are both, in a sense, successors in business to a firm who began to make plows in 1840 and denominated them "Calhoun" plows. These plows became popular, and the evidence in this interference shows that for several years other firms have been denominating their plows "Calhoun." This being true, the word has become common property and should not be registered by either party.

335. McELWYN v. BLACKWELL.

February 13, 1879. C. D. 1879, 37.

PAINE, Commissioner:

Illegal Registration—Formal Award of Priority.—Where registration has been illegally granted to a part owner only of a mark, it should not be illegally granted to another part owner only in order to put both on an equal footing before the courts. But an illegal registration will not prevent a subsequent registration to the rightful owner, and in an interference between a registrant and an applicant, neither of whom is entitled to registration, a formal award of priority should be given to the registrant.

336. WRIGHT ET AL. v. SIMPSON.

March 17, 1879. C. D. 1879, 75.

PAINE, Commissioner:

Who Has Trade-Mark Upon Dissolution of Firm—Illegal Registration by One Member.—Upon a partnership agreement which provides that a firm may be dissolved at the

pleasure of either partner, and that one of the partners shall retain his exclusive knowledge of the formula for the manufacture of the article sold by the firm, neither party is entitled upon the dissolution to the exclusive use of a trade-mark used by the firm on the article; and the fact that an illegal registration has been granted to one of the copartners will not justify a grant of a second illegal registration to the other.

337. SORG v. WELSH.

September 19, 1879. C. D. 1879, 258.

DOOLITTLE, Acting Commissioner:

Registration Vitiated When Not Entitled to Mark on Entire Class—Issue—Practice.—Where one concedes priority of ownership of his mark as applied to plug tobacco when his registration covered all kinds of tobacco and cigars, *held*, that such concession vitiated the entire registration (Smith v. Reynolds, 3 O. G., 214.) Where the registered mark was for tobacco broadly and the application was for a mark to be used only on plug tobacco, the issue should have been confined to plug tobacco.

338. BRAUN & CO. v. BLACKWELL.

February 9, 1881. C. D. 1881, 10.

MARBLE, Commissioner:

Interferences Under the Statute of 1870.—The Supreme Court having decided that the trade-mark statute of 1870 was unconstitutional, all trade-mark interferences pending will be dissolved.

339. JACOBY ET AL. v. LOPEZ ET AL.

December 21, 1882. C. D. 1882, 7.

MARBLE, Commissioner:

Foreign Certificate—When Not Evidence.—A certificate of registration in Cuba cannot be considered as proper evidence in an interference where no notice was given to the other side of any intention to rely upon the same at the hearing, especially as the office has no means of ascertaining the conditions upon which registration may be effected in Cuba.

340. BOVEE & ADAMS v. TOBY.

June 7, 1881. 22 MS. D., 219.

MARBLE, Commissioner:

Dissolution — Principal — Agent.—T. was the agent of B. & A. T. designed a trade-mark to be used on B. & A.'s goods. B. & A. used the mark on the goods. T. applied for registration of the mark; B. & A. afterwards applied. An interference was declared. In view of the above admitted facts B. & A. moved to dissolve. Granted, since under no circumstances could T. be allowed registration in view of his admissions.

341. LYON, DUPUY & CO.

July 1, 1884. C. D. 1884, 29.

DYRENFORTH, Acting Commissioner:

Ownership — Registration Under Statute of 1870 Valid Reference.—The statute provides that a trade-mark to be registrable must be used in foreign commerce, but it does not by any fair intendment convey the idea that a party may acquire the right to use somebody else's mark merely by using it in such trade; and as a registrant must be one entitled to the *exclusive* use of a mark, a registration under the law of 1870 is a valid reference.

342. C. A. YALE CIGAR MFG. CO. v. C. A. YALE.

July 19, 1884. C. D. 1884, 27.

DYRENFORTH, Acting Commissioner:

Employer — Employee — Diligence.—The question in a trade-mark interference is not priority of selection or creation, but priority of adoption and use. Even though an employee selects a mark, if it be used on the employer's goods, the latter, by such use, becomes the owner. To adopt and use a trade-mark so as to be entitled to registration, a person must have trade of his own. Diligence in registration, unlike diligence in applying for a patent, is without force, since such diligence has nothing to do with the ownership of the mark.

343. BALAS FRERES.

February 25, 1885. 27 MS. D., 336.

BUTTERWORTH, Commissioner:

Refusal to Register Because of Pending Application.—The examiner refused to register the above applicants' trade-mark because of the pending of an application by a previous applicant whose application was not in proper form for an interference. *Held*, that an interference should not be declared until the previously filed application was in proper form, nor should the present applicants' mark be registered until they established their *prima facie* right to the mark as between themselves and the previous applicant.

344. FOLEY v. LICKES.

April 30, 1886. 30 MS. D., 439.

MONTGOMERY, Commissioner:

"Cura Cream"—"Cuticream"—Motion to Dissolve After Taking Testimony.—Foley's trade-mark consisted of the word "Cuticream." His application was rejected on Lickes' registered mark consisting of the words "Cura Cream." The above interference was declared February 18, 1886; Foley took his testimony March 13, 1886. On the 2d of April, Lickes moved to dissolve on the ground there was no interference in fact. *Held*, that the interference should proceed and priority be awarded one or the other of these parties.

345. TURNEY v. OREGON INDIAN MED. CO.

November 18, 1886. 32 MS. D., 135.

VANCE, Acting Commissioner:

Date of Use Set Up May Be Amended.—Rule 12, which states that "No amendment will be admitted unless warranted by something in the statement or *fac-simile* as originally filed," does not apply to the date of use set up in the application, which may be amended in the same way as a preliminary statement in an application for patent.

346. UNGER v. SAXLEHNER.

December 2, 1887. 35 MS. D., 430.

HALL, Commissioner:

Motions to Dissolve Must Be Filed Within Twenty Days from the Declaration of the Interference.—While it is true that preliminary statements are not required in an interference between applicants for registration of trade-marks, and Rule 116, Rules of Practice, does not apply in terms, it is also true that it is the practice of the office to regard the applications themselves as preliminary statements and to require motions to dissolve to be filed within twenty days after the date of declaration of interference. Applicants are thus given the same time within which to move as is provided in applications for patents, and the practice conforms in effect to the practice in equity cases as is required by the last clause of section 3, Act of March 3, 1881.

347. COLUMBIA SEWING MACHINE CO.

November 4, 1889. 41 MS. D., 228.

MITCHELL, Commissioner:

No Interference Between an Application for Label and a Registered Trade-Mark.—The question as to the title to a trade-mark cannot be inquired into as between a registered trade-mark and an application for registration of a label.

348. RICHMOND v. THE DR. S. A. RICHMOND NERVINE CO.

June 21, 1890. 52 O. G., 307.

MITCHELL, Commissioner:

Right to Register Personal Portrait.—Where it appeared that as against the applicant a certain corporation and its successors had the exclusive right to make a certain medical compound, to which the portrait of the applicant had been applied as a trade-mark, *held*, that the applicant could not register his portrait for use in connection with the same medical compound.

349. PROCTOR & GAMBLE v. COLUMBIA MFG. CO.

October 10, 1890. 44 MS. D., 300.

MITCHELL, Commissioner:

Trade-Mark Must Be Attached to Goods and the Goods Sold.—C. Mfg. Co. is a registrant, P. & G. are applicants. The burden of proof is on P. & G. The evidence taken by them shows that they stamped the mark in question on a box of soap but does not show they ever sold the soap. Priority awarded C. Mfg. Co., since the trade-mark law requires that, in order to acquire ownership of a mark, such mark must be attached to goods and the goods sold.

350. MANITOWOC MFG. CO. v. DICKERMAN.

November 18, 1891. 57 O. G., 1721.

FROTHINGHAM, Assistant Commissioner:

Burden of Proof—Analogy to Practice in Courts of Equity.—In an interference between an applicant for registration and a registrant of a trade-mark the burden of proof is upon the applicant to overcome the "*prima facie* evidence of ownership" made by the registration of such mark.

The right to registration as between two interfering applicants or between an applicant and a registrant belongs to the one who, if a party to a suit in a court of equity, would be adjudged the owner of the trade-mark.

Ownership.—Whoever is the first to adopt and use a mark in either domestic or foreign trade is the owner of such trade-mark.

Commerce Clause of the Statute—Ownership—Right to Registration.—The commerce clause of the statute merely gives jurisdiction to the patent office, and to the United States courts in trade-mark causes arising between citizens of the same state. The common-law owner of a trade-mark is entitled to registration whenever he shall show use "in commerce with foreign nations or with the Indian tribes," and he cannot be deprived of his right to such registration by reason of the use of the mark in foreign trade by another person, even though the mark has been registered by such other person.

351. AMERICAN LEAD PENCIL CO.

September 27, 1892. 61 O. G., 151.

SIMONDS, Commissioner:

Effect of Registration Under the Act of 1870 for Purposes of Interference With Present Application.—Where the subject-matter of application for trade-mark is clearly anticipated by a mark registered under the Act of 1870, and the examiner properly refused to declare an interference because of the nullity of such prior registration, and also properly refused registration to the present applicant because the prior registry makes the mark an anticipation, *held*, the proper course for the office in such a case is to give the applicant under the law of 1870 notice that an application is pending with which his registry would interfere if it were under the existing act, and allow him sixty days to make a new application.

352. STEWART v. EINSTEIN v. SAWHILL.

September 30, 1892. 61 O. G., 287.

FROTHINGHAM, Assistant Commissioner:

Interference—Priority of Use.—The dates of adoption as set forth in interfering applications for the registration of a trade-mark are not conclusive as to the question of lawful title to the mark.

Adoption and Use—Ownership.—The main question to be determined in a trade-mark interference is priority of such adoption and use as will establish ownership, and this will not be determined in advance of the evidence introduced by the parties in the usual way.

The filing of an application for registration is not conclusive that the mark has been adopted and used at the time of filing said application.

**353. JERSEY CITY PACKING CO. v. DOLD
PACKING CO.**

December 29, 1892. 51 MS. D., 452.

SIMONDS, Commissioner:

Official Seal Not Necessary to the Validity of Concession of Priority.—The examiner of interferences refused to recognize a concession of priority which did not have the

official seal thereon but was signed by the treasurer. *Held*, that as it appeared that such treasurer had the right to make such concession, the seal of the corporation was not necessary to render the concession valid.

354. STEWART MEDICINE COMPANY v. GOLDAINE.

June 15, 1893. 64 O. G., 1005.

FISHER, Assistant Commissioner:

Rule 13 Not Inconsistent With Law.—Trade-mark Rule 13, which states that “each applicant and registrant will be held to the date of adoption alleged in the statement filed with his application,” *held* to be not inconsistent with law, and therefore has the force of a statute.

355. STEWART v. EINSTEIN v. SAWHILL.

September 9, 1893. 64 O. G., 1649.

SEYMOUR, Commissioner:

Name and Signature of a Deceased Physician — Right to Use.—A druggist whose only relation with a physician was that he filled the latter’s prescriptions occasionally, cannot, upon the death of the physician, adopt the *fac-simile* of his signature and picture, or either of them, as a trade-mark without showing to the office in some manner the consent of the physician that this should be done, or acquiring the right to do so from the personal representative of the deceased.

Another druggist who had a commercial partnership with the physician up to the time of his death, in the business of dispensing the remedies used by the physician, the two having an extensive trade in them, domestic and foreign, has a right as surviving partner to the trade which had become established, to the good-will connected with it, and to the inchoate trade-mark right which was incident to it, at least to the extent of treating them as assets of the partnership for the purpose of closing out the partnership business.

356. CLOSSON & KELLY v. BAKER & LEVY.

November 7, 1893. 53 MS. D., 242.

SEYMOUR, Commissioner:

To Overcome a Registration Applicant Must Show Use in Foreign Commerce Prior to Such Registration. B. & L. registered their mark July 20, 1891. C. & K.'s record shows that they had adopted the mark prior to July 20, 1891, but their record fails to show that they had used it in foreign commerce prior to that time. Priority therefore was awarded B. & L.

357. HANCE v. FLOWER & WITWER.

March 29, 1894. 54 MS. D., 230.

FISHER, Assistant Commissioner:

The First to Adopt Entitled to Ownership and Award of Priority.—The question to be determined in a trade-mark interference is, who was the first to adopt and use the mark so as to establish ownership. Hance has established such priority of adoption and is entitled to an award of priority over his opponent. The question whether he has complied with the statute in regard to foreign commerce, he having only shipped one case of goods to a foreign country, is an *ex parte* one and should not now be decided.

358. KIRBY v. McLAUGHLIN & CO. v. JOHNSON.

August 21, 1895. 72 O. G., 1785.

FISHER, Acting Commissioner:

Interference—Motion to Dissolve.—A trade-mark consisting of the words "Electric Light" alone, and another trade-mark consisting of these words accompanied by the representation of the upper part of an electric light bulb with zigzag rays emanating from it, conflict, the words being the "prominent, essential, and vital feature" of the marks, and a motion to dissolve the interference denied.

359. LOWN v. OHIO COFFEE & SPICE CO.

August 24, 1895. 73 O. G., 1136.

FISHER, Acting Commissioner:

“Capitol” — “Capital” and Flags. — The difference between “Capitol” and “Capital,” the latter accompanied by a group of American flags, is too small to be noticed by the ordinary purchaser, and motion to dissolve an interference between the two denied.



Ohio C. & S. Co's Mark.



Lown's Mark.

LABEL.

360. EVANOVITCH.

July 12, 1881. 22 MS. D., 251.

MARBLE, Commissioner:

Label Containing Trade-Mark Matter Which Had Been Registered Under Act of 1870.—A label containing trade-mark matter which had been registered under the Act of 1870 should not be registered as a label until the arbitrary matter shall have been re-registered under the provisions of the Trade-mark Act of 1881.

361. GAUSE & CO.

September 1, 1881. 22 MS. D., 318.

MARBLE, Commissioner:

“Silver Spoon.”—The examiner objected to the words “Silver Spoon” in the label containing the announcement “A silver spoon given away with each pound,” holding that such words constituted trade-mark matter. The examiner overruled and registration allowed.

362. INSTRUCTIONS.

April 21, 1884. 25 MS. D., 446.

BUTTERWORTH, Commissioner:

Label Containing Trade-Mark Matter Not to Be Registered as a Label.—The examiner instructed not to register as labels devices containing matter registrable as trade-marks, since section 3 of the Act of 1874 expressly provides that “There shall be paid for recording the title of any print or label *not a trade-mark* six dollars, and the Commissioner of Patents, not the applicant, must determine whether the application presented is a trade-mark or a label.”

363. MOODIE.

September 22, 1884. 53 C. D., 1884, 35.

BUTTERWORTH, Commissioner:

Label Statute Construed.—The proper construction of the label statute is that the subject-matter of an application for a label shall be that which may be properly claimed as a label and not merely subject-matter for a trade-mark. But the statute does not mean to imply that if certain subject-matter is found to be incapable of registration as a trade-mark it can, nevertheless, be registered as a label, for it may not be descriptive of the quality or nature of the goods, and therefore fail to constitute a label.

364. MOODY v. BUTTERWORTH, COMR. OF PATENTS.

December 22, 1884. C. D. 1885, 1.

BUTTERWORTH, Commissioner:

Trade-Mark Should Not Be Registered as a Label. The Supreme Court of the District of Columbia has just decided orally that the law makes it incumbent on the Commissioner to decide in each application whether an alleged label was a trade-mark, and if the latter, not to register it except as a trade-mark, and upon the payment of the fee of twenty-five dollars fixed by law. The examiner ordered, therefore, to follow that practice.

365. CARNEY.

January 5, 1885. 27 MS. D., 113.

BUTTERWORTH, Commissioner:

Transparent Device on a Watch Dial.—A disk of thin paper having the figures and graduations usual in watch dials printed upon it in such a way that when the disk is pasted upon the inside of a watch crystal the figures will appear in their proper positions and can be read from the outside, being a part of the mechanical structure of the article, and the identical matter being already covered by letters patent, should not be registered as a label.

366. BERINGER.

August 24, 1885. 29 MS. D., 12.

MONTGOMERY, Commissioner:

Label Never Used as a Trade-Mark.—The words “Anti-Bacteria” may not be a trade-mark, it may never become one; but, even though both these things be true, it does not necessarily follow that it may be registered as a label. When a party coins a word as a designation of merchandise it must be registered, if at all, as a trade-mark.

367. WIESEL.

March 30, 1886. 36 O. G., 689.

MONTGOMERY, Commissioner:

Act of June 18, 1874, Construed.—The act of June 18, 1874, providing for the registration of labels in the Patent Office, did not intend to provide for such registration of a label which was in fact a trade-mark. Where a label which “bears such distinguishing marks as entitle it to registration as a trade-mark” is proposed for registration, the “function of the Commissioner” is not “merely ministerial,” and he is at liberty to refuse such registration.

368. JELLERSON.

January 17, 1889. 39 MS. D., 144.

VANCE, Assistant Commissioner:

“Ervilline Liquid Polish” — Not Registrable as a Label.—The words “Ervilline Liquid Polish” being registrable as a trade-mark must first be registered as such before the words can be registered as a label.

369. NUNEY.

February 7, 1889. 39 MS. D., 230.

VANCE, Assistant Commissioner:

What is Not Registrable as a Label.—The words “Aqua De Florida” and the representation of a tropical scene taken together, do not make a device registrable as a label,

although applicant has not used his label as a trade-mark and cannot register it as such. Having filed his application for registration of his label he has protected himself against the condemnation of *Marsh v. Warren*, 14 O. G., 678. He must now wait for registration until he has registered his device as a trade-mark.

370. SNOOK & HALBE.

July 23, 1889. 40 MS. D., 423.

FISHER, Assistant Commissioner:

What Not Registrable as a Label.—The words “Cataraact Mills, Bee Hive Brand, Pure and Genuine Pearl Hominy” with the picture of a bee-hive cannot be registered as a label, since it includes trade-mark matter; and this notwithstanding the fact that applicant alleges that he cannot register his device as a trade-mark, since he has not used it in commerce with foreign nations.

371. COLUMBIA SEWING MACHINE CO.

November 4, 1889. 41 MS. D., 228.

MITCHELL, Commissioner:

“Columbia Sewing Machine”—Not Registrable as a Label.—Although the word “Columbia” is a part of applicant’s name, it should not be registered as a label, it having an arbitrary signification.

372. FIELD.

November 14, 1889. 41 MS. D., 275.

FISHER, Assistant Commissioner:

Label Containing Trade-Mark Matter.—1st. It is established by numerous decisions that the Commissioner may refuse to register a label.

2d. He may refuse to register a device which in its entirety is not a trade-mark but which contains trade-mark matter.

3d. He may refuse to register such device even though accompanied by a fee of twenty-five dollars.

373. DIAMOND LABORATORY CO.

July 23, 1890. 44 MS. D., 18.

MITCHELL, Commissioner:

When a Label May Be Registered.—Where applicant had previously registered a sprig of marshmallow as a trade-mark, *held*, that because he adds a diamond as the symbolical representation of his name thereto he should not thereby be precluded from registering his whole device as a label.



Applicant's Mark.

374. DIAMOND LABORATORY CO.

July 23, 1890. 44 MS. D., 19.

MITCHELL, Commissioner:

Label Registered After Trade-Mark.—Where a trade-mark had been registered for “Medicinal and toilet preparations,” *held*, that a label containing the trade-mark might be registered for a soap designed for medicinal or toilet purposes.

375. NEWMAN.

February 13, 1891. 45 MS. D., 430.

FISHER, Assistant Commissioner:

Dial for Use on a Clock Not Registrable as a Label — Title Should Appear on Label.—1st. A dial for use on a watchman’s clock to receive certain records made by the watchman is not registrable as a label. If entitled to protection at all it is through the medium of a patent.

2d. The title should appear on all labels registered.

376. ECKER & CO.

November 20, 1891. 48 MS. D., 446.

FROTHINGHAM, Assistant Commissioner:

Trade-Mark Matter.—The examiner’s refusal to register a label which contained trade-mark matter, affirmed.



Applicants' Mark.

377. PALMER.

January 23, 1892. 58 O. G., 383.

SIMONDS, Commissioner:

What is Registrable as a Label.—Applicant offered for registration as a label “a pictorial representation descriptive of the hammock to which the label applies.” *Held*, proper subject for registration as a label.

A label in order to be entitled to registration by the Commissioner of Patents under the copyright law must have the same degree of artistic excellence as would entitle it to copyright in the office of the Librarian of Congress.

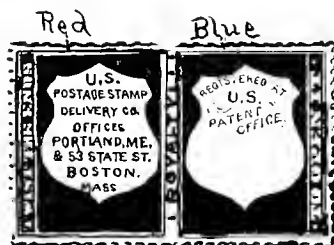
BLACK AND GOLD.

378. NATIONAL U. S. STAMP DELIVERY CO.

July 29, 1892. 60 O. G., 893.

SIMONDS, Commissioner:

Practice — Trade-Mark and Label.—“The arrangement of two panels, one in red and one in blue, each bearing a shield,” etc., is proper subject-matter for a trade-mark rather than a label.



Applicants' Label.

379. HAINLINE & CO.

February 2, 1892. 58 O. G., 947.

SIMONDS, Commissioner:

Purely Descriptive Not Registrable. — A label which is purely descriptive of the article to which it is intended to be attached is not registrable within the meaning of the law. (Quoting Higgins v. Keuffel, 55 O. G., 1139; 140 U. S., 428.)

380. RACINE BASKET MFG. CO.

October 7, 1892. 51 MS. D., 194.

FROTHINGHAM, Assistant Commissioner:

What Should Not Be Registered. — A label that included seven or eight distinct styles and sizes of handsome hand-drawn ornamental letterings and a clouded background, and which the applicant claimed were original and artistic, containing a trade-mark which had been registered, refused registration as a label in view of Higgins v. Keuffel, 55 O. G., 1139.

THIS IS A GENUINE **"RACINE BASKET"** AND IS BRANDED
WITH OUR TRADE MARK THUS, —

REGIS-
TERED

THE RACINE BASKET
EXTRA QUALITY

TRADE
MARK.

POSITIVELY NONE GENUINE UNLESS BRANDED WITH THE ABOVE
TRADE MARK

*Compare our goods with any other make. Use them and you will find it pays
you to get the best. Why do we say this?
Because we believe what we say, and think you may be induced to try our
goods. If you try them, you will stick to them and make some money, so shall we.
Ask your dealer for these goods
and be sure they are branded with the above trade mark.*

The Racine Basket Mfg. Co.

381. BALTZ BREWING CO.

October 26, 1892. 51 MS. D., 246.

FROTHINGHAM, Assistant Commissioner:

Arbitrary Matter.—While the thing which applicant presents for registry as a label may be artistic, yet it is clear that it is merely fanciful and arbitrary, and, not being descriptive of the contents of the package to which it is applied, does not come under the provisions of *ex parte* Palmer, 58 O. G., 383, and therefore should not be registered.



382. H. J. HEINZ CO.

January 28, 1893. 62 O. G., 1064.

SIMONDS, Commissioner:

Constitutionality.—Until the Supreme Court distinctly says otherwise, the label law is, for the Patent Office, constitutional.

383. METTE & KANNE DIS. CO.

July 28, 1893. 53 MS. D., 34.

FISHER, Assistant Commissioner:

Label Containing Trade-Mark Matter.—A label, although it has artistic merit, if it contains matter registrable as a trade-mark and it is used as a trade-mark, should not be registered as a label. Simply because it shows an eagle and a shield does not suggest to the ordinary observer the word "American."

384. LIBRAWICZ.

September 22, 1893. 53 MS. D., 192.

FISHER, Assistant Commissioner:

"Columbus Discovers Land."—A label for alcoholic liquors consisting of a colored picture representing a scene in the life of Columbus and the words "Columbus Discovers Land," is not in any sense descriptive of alcohol, and should not therefore be registered.



Applicant's Label.

385. KING & CO.

November 24, 1893. 53 MS. D., 309.

FISHER, Assistant Commissioner:

Arbitrary Matter Formerly Registered as a Trade-Mark. — A label consisting of the name of the applicant and having in its centre the representation of a crown surmounted by a globe and three parts of a maltese cross, refused registration, although the arbitrary matter had been before registered as a trade mark, on the ground that the label had no value as a composition. (*Ex parte Eldridge*, 55 O. G., 1278.)



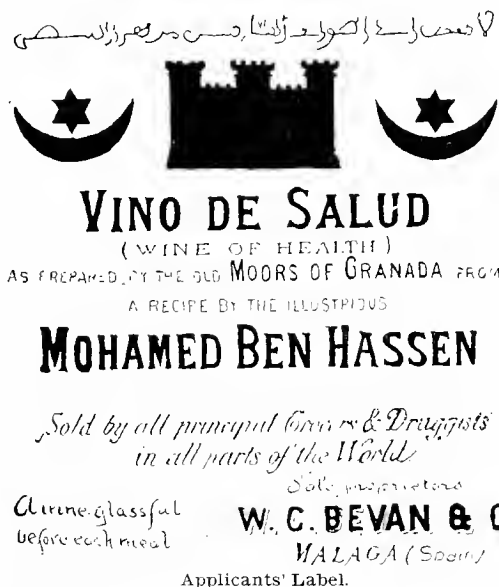
Applicants' Label.

386. BEVAN & CO.

July 31, 1894. 55 MS. D., 151.

FISHER, Assistant Commissioner:

Label Possessing No Value as a Composition or Work of Art Should Not Be Registered.—A label bearing a sentence at the top in black characters, below this the applicants' trade-mark, and the rest descriptive matter, fails to reach the standard set up in *Higgins v. Keuffel*, 55 O. G., 1139, as a literary production and should not be registered.



387. FOWLER.

June 23, 1896. 59 MS. D., 226.

FISHER, Acting Commissioner:

"Squirrel," for Shells Containing a Squirrel Load.—The word "Squirrel" and the representation of a squirrel attached to shells, at best only designate what the shells contain, viz.: "a squirrel load." It is valuable only when connected to such packages as descriptive of their contents. The label of itself is not intended to instruct the reader, and it has not by itself any value as a composition, and should not, under the decision in *Higgins v. Keuffel*, 140 U. S., 428, be registered as a label.

388. UNITED STATES PRINTING CO.

August 20, 1895. 57 MS. D., 357.

FISHER, Assistant Commissioner:

Wrapper for Playing Cards.—A label which is intended to be applied as a wrapper or label for playing cards, and which is descriptive of cards only because it is a *fac-simile* of the back of a card, should not be registered as a label because it is primarily a design to be placed upon an article of manufacture and to become a part thereof.



Applicant's Label.

389. WILLIAMS & CO.

July 6, 1895. 57 MS. D., 154.

FISHER, Assistant Commissioner:

"Brownie Brand" Registrable.—A label bearing the title "The Brownie Brand Salmon" and the representation of Brownies bearing a fish upon a platter, and other minor features, may be registered as a label for canned salmon where the applicant had previously registered the words "The Brownie Brand."

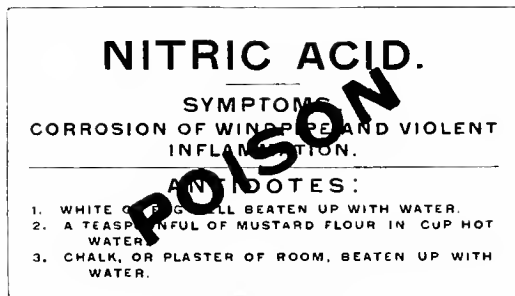
(NOTE.—When this case came back to the examiner he requested that it be re-opened. This was granted, and the application was rejected on the ground that, the label having been used before registration, such registration would be invalid; citing *Marsh v. Warren*, 14 O. G., 678. The case has never been further prosecuted.)

390. COHEN.

December 4, 1894. 55 MS. D., 412.

FISHER, Assistant Commissioner:

What Should Not Be Registered.—A label consisting of a slip of paper bearing the words “Nitric Acid,” followed by words in smaller type setting forth the symptoms of poisoning by nitric acid, with the word “Poison” written across the label in red ink, refused registration on the ground that it was not the product of intellectual labor and as a composition did not promote the progress of science or the useful arts.



Applicant's Label.

T. M.—9.

NAMES.

391. ROBERTS.

April 24, 1871. C. D. 1871, 10 and 101.

LEGGETT, Commissioner:

Name in Combination With Other Words.—The expressions “A Luxury: R. J. Roberts’ Razor Steel Scissors. The best in the world. The best is the cheapest,” and “An exquisite pleasure to shave with R. J. Roberts’ Diamond Edged Razors,” and “R. J. Roberts’ Diamond-edge Razor. Every Razor Warranted,” may all be registered as trade-marks, in accordance with the decision *ex parte* Blanchard Sons, C. D. 1871, 97.

392. BLANCHARD SONS.

April 24, 1871. C. D. 1871, 97.

LEGGETT, Commissioner:

“The Blanchard Churn” Not the Mere Name of the Applicant.—The Act of Congress of July 8, 1870, provides that “The Commissioner of Patents shall not receive and record any proposed trade-mark * * * which is merely the name of a person, firm or corporation only, unaccompanied by a mark sufficient to distinguish it from the same name when used by other persons.” The only thing about this limitation that is ambiguous is the meaning of the word “Mark.” The rulings of the courts indicate that this word, which is synonymous with “Trade-Mark,” means a word or letter or figure or sign or symbol or device. The expression “The Blanchard Churn” is not the mere name of the person, but the name is accompanied by the marks “The” and “Churn,” and as the expression seems to be a good common law trade-mark it may be registered.

393. JOHNSON & CO.

September 12, 1872. C. D. 1872, 211.

THACHER, Acting Commissioner:

"Parson's Purgative Pills, P. P. P."—This case is analogous to *Blakeslee & Co.*, C. D. 1871, 284. The letters themselves would probably be regarded as a legal trade-mark, but when used in connection with the words of which they are initials they lose the characteristic of an arbitrary device.

394. JOHNSON & CO.

September 12, 1872. C. D. 1872, 211.

THACHER, Acting Commissioner:

"Johnson's American Anodyne Liniment, Established A. D. 1810."—It is claimed that "Established A. D. 1810" is an arbitrary distinguishing mark, and that by the addition thereof the whole is constituted a legal trade-mark. But it seems that the additional phrase indicates the date of discovery of the liniment, and also to this extent it is descriptive. It would be unjust to give one person the monopoly of words used in a descriptive way to which others might have the same right.

395. ROYAL BAKING POWDER CO.

April 11, 1874. 14 MS. D., 390.

THACHER, Acting Commissioner:

"Liebig."—The word "Liebig" being well known in this country as indicating certain preparations put up under receipts of the famous chemist, Baron Liebig, its use by applicant is deceptive when applied to extracts where there is no pretense that such extracts are preparations of Liebig's, and the words should not under any circumstances be registered as a trade-mark.

396. LAWRENCE.

January 4, 1875. 16 MS. D., 263.

SPEAR, Acting Commissioner:

"Dr. Piper's Paint."—The words "Dr. Piper's Paint" should not be registered as a trade-mark, since it consists only of a person's name and the article to which it is applied.

397. TUTTLE MFG. CO.

August 11, 1875. 16 MS. D., 62.

SPEAR, Acting Commissioner:

"Tuttle."—The word "Tuttle," which constitutes only a part of applicant's name, may be registered as a trade-mark. (Howe Machine Co., Cox's Trade-Mark Cases, p. 421.)

398. INDIA RUBBER COMB CO.

August 14, 1875. 16 MS. D., 66.

THACHER, Commissioner:

Name of Manufacturer.—The words "The India Rubber Comb Co., New York, Sole Manufacturers of Goodyear's India Rubber and Gutta Percha Combs," should not be registered as a trade-mark since they constitute merely the applicant's name and the statement of a fact, viz., that it is the sole manufacturers of Goodyear's India rubber and gutta percha combs.

399. INDIA RUBBER COMB CO.

October 27, 1875. 16 MS. D., 142.

SPEAR, Acting Commissioner:

"I. R."—The initial letters of the first two words of the name of the firm render the whole legend an arbitrary mark and not the same thing as "India Rubber Comb Co."

400. INDIA RUBBER COMB CO.

November 24, 1875. C. D. 1875, 139.

SPEAR, Acting Commissioner:

When Applicant's Name May Be Registered.—The Commissioner on August 14, 1875, refused to register applicant's trade-mark. Since then the superior court of New York City has granted an injunction against the defendant's use of applicant's name, and applicant asks reconsideration of the decision of August 14, 1875. *Held*, that where the Commissioner is convinced by such proof as the final adjudication of a court of competent jurisdiction that such name was first

adopted by the party seeking to record it, that it has been used as such for many years, that it has come to denote origin and ownership to all the world, and that no one else can use that name without perpetrating a fraud, then the reason of the statute forbidding the registry of applicant's name falls in that particular instance and such name may be registered, especially where such name had become a valid trade-mark prior to 1870.

401. TURNER.

December 3, 1875. 16 MS. D., 172.

SPEAR, Acting Commissioner:

"Turner's Flavoring Syrup, Desserts, Sauce or Beverages."—Whether the article to which this mark is applied be a syrup, sauce or beverage, it is purely descriptive, and should not be registered.

402. ROWE & POST.

February 25, 1876. C. D. 1876, 68.

SPEAR, Acting Commissioner:

Mere Name Rightfully in Use as a Trade-Mark on July 8, 1870.—It was on account of the peculiar circumstances surrounding it that the name "India Rubber Comb Co." was registered (C. D. 1875, 139), one of which was that that name was rightfully in use as a trade-mark on the 8th day of July, 1870.

403. DUNDAS, DICK & CO.

March 8, 1876. C. D. 1876, 73.

DUELL, Commissioner:

"Tasteless," for Medicine.—The word "Tasteless" associated with the letters D. D. & Co. should not be registered as a trade-mark for medicines.

404. RUBBER CLOTHING CO.

June 28, 1876. C. D. 1876, 159.

DUELL, Commissioner:

Affidavits of Disinterested Parties Should Be Required to Show a Name to Have Been Used as a Trade-Mark Prior to July 8, 1870.—While a mere name may be registered

as a trade-mark where it is shown to have been used as a trade-mark prior to July 8, 1870, the affidavits of disinterested parties who have a knowledge of such use should be required before registration.

405. ASHTON & SONS.

August 16, 1876. 17 MS. D., 108.

DUELL, Commissioner:

"Ashton's Factory Filled."—By section 4939, the Commissioner is prohibited from receiving for registration "The name of a person, firm or corporation unaccompanied by a mark sufficient to distinguish it from the same name when used by other persons." "Factory Filled," as applied to packages containing salt, is descriptive; therefore the term "Ashton's Factory Filled" should not be registered as a trade-mark.

406. BARTON TOOL CO.

February 3, 1877. Endorsed.

DOOLITTLE, Acting Commissioner:

The alleged mark—"1832. D. R. Barton Tool Co., Rochester, N. Y."—does not possess sufficient arbitrary matter to warrant registry as a trade-mark.

407. ROGERS.

February 6, 1878. 18 MS. D., 208.

SPEAR, Commissioner:

"Rogers' Consumption Cure and Cough Lozenge."—The above words applied to a medical compound, and sold in the form of a lozenge, are purely descriptive and should not be registered.

408. SWIFT.

August 16, 1879. 20 MS. D., 69.

DOOLITTLE, Acting Commissioner:

"S. S. S." Associated With the Words Swift's Syphilitic Specific.—While the letters "S. S. S." standing alone would probably constitute a good trade-mark, when those letters are on the same label and closely associated with the words "Swift's Syphilitic Specific," of which they are the initial letters, the case is brought under the doctrine of *ex parte* Johnson & Co., 2 O. G., 315, and registration should be refused.

409. SULLIVAN ET AL.

August 26, 1879. C. D. 1879, 236.

PAINE, Commissioner:

"Bob Ingersoll" — Consent Filed. — The name "Bob Ingersoll" associated with the representation of the bust of the man of that name is registrable as a trade-mark for cigars; Mr. Ingersoll having filed his consent thereto.

410. ISAAC D. SMITH.

August 29, 1879. C. D. 1879, 222.

PAINE, Commissioner:

"Smith's Medicated Prunes" and Representation of Prunes. — The words "Smith's Medicated Prunes" associated with a pictorial representation of a part of a twig, three leaves and a plum, are not registrable as a trade-mark for medicated prunes.

See No. 494 for *fac-simile*.

411. PACE ET AL.

September 17, 1879. C. D. 1879, 256.

BOOLITTLE, Acting Commissioner:

"Bayard" — Names Other Than Applicants'. — Proper names other than those of applicants' may be registered as trade-marks. The name "Bayard," therefore, and a portrait of a senator of that name may be registered by applicant.

412. CENTEMERI & CO.

March 17, 1880. 20 MS. D., 489.

PAINE, Commissioner:

Name and a Looped Flourish. — Applicants' trade-mark consists of their name in connection with a looped flourish. If their mark was their name in connection with a punctuation point registration would be refused. If it was their name in connection with a star it would be granted. The mark presented between the two, and resolving the doubt in favor of the falls applicants' it may be registered.

Centemeris
New York *Milano*
Gloves
 Applicants' Mark.

413. PARKER.

July 15, 1880. 21 MS. D., 244.

MARBLE, Commissioner:

"Parker's Bronchial Lung and Liver Pad Combined."

The above words are not registrable under the statute, since all except "Parker's" are descriptive and that word is merely applicant's name.

414. BUCHANAN & LYALL.

October 12, 1880. 21 MS. D., 397.

MARBLE, Commissioner:

Name and Representation of Goods.—Applicants' mark consisted of their name and a border, three sides of which were formed of representations of larger and smaller sizes of plug tobacco, while the fourth formed a kind of open panel for the firm name, etc. The examiner refused registration, holding the design to be only applicants' name and representation of their goods. *Held*, that it was something more than that. The design possessed sufficient arbitrary qualities to render it registrable.

415. FAIRCHILD.

August 10, 1881. C. D. 1881, 3.

MARBLE, Commissioner:

"Fairchild"—Long Use.—The mere name of a person does not form a proper subject for trade-mark registration, although it appears that such name, by long association with a certain line of goods, has come to be applied as a name or title to such goods.

416. FRIEBERG & WORKMAN.

October 5, 1881. C. D. 1881, 41.

MARBLE, Commissioner:

Name Connected With Arbitrary Matter.—The words "J. A. Bowen," in connection with a shield and other arbi-

trary matter, may be registered as a trade-mark, it being more than the mere name of the man from whom applicants' acquired their business.



Applicants' Mark.

417. ADRIANCE, PLATT & CO.

November 29, 1881. C. D. 1881, 52.

MARBLE, Commissioner:

“Adriance” — What Should Not Be Included in Essential Features. — The fact that “Adriance” is not the full name of the firm but only of one member does not establish for the name an arbitrary character nor confer upon the firm an exclusive right to use it as against others of the same name. This being so, the name should not be included as an essential element of applicants' mark.

418. PRICE.

January 4, 1882. 23 MS. D., 16.

STOCKBRIDGE, Acting Commissioner:

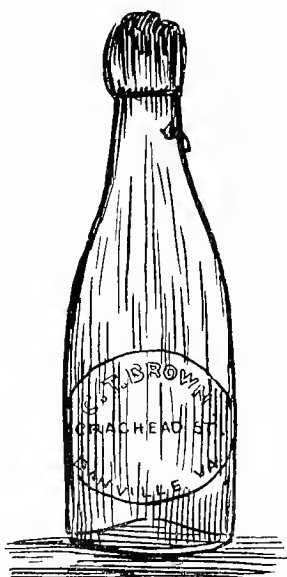
What May Be Registered. — The words “W. Baker & Co.'s Chocolate, Double Vanilla, Dorchester, Mass.,” are not by themselves proper subject-matter of a trade-mark, but no objection is seen to applicant's covering in this registration the various pictorial features of his label; but the doctrine is well settled that descriptive words cannot be included in a recital of the essential portion of a trade-mark. (Farnham & Co., 18 O. G., 412; Adriance, Platt & Co., 20 O. G., 1820.)

419. BROWN.

July 19, 1888. 37 MS. D., 395.

HALL, Commissioner:

Name of Applicant. — Applicant's alleged trade-mark consisted of the name and place "C. T. Brown, Danville, Va.," arranged in circular form within a circle and across the center of the circle the words "Craghead St.," which was a street in Danville. *Held*, that the device was not sufficiently arbitrary to constitute a trade-mark, the circular form being the ordinary one for bottle labels.



Applicant's Mark.

420. RICHMOND v. THE DR. S. A. RICHMOND NERVINE CO.

June 21, 1890. 52 O. G., 307.

MITCHELL, Commissioner:

Personal Names — "Portrait" — Trade-Marks. — The principles applicable to trade-mark cases involving personal names are doubtless applicable to trade-mark cases involving portrait trade-marks.

No person can acquire by adoption such an interest in the name of another person as to prevent that person from using

his own name in a fair and honest manner in the ordinary course of business.

To justify the exclusive use of any man's name or portrait as against the man who bears the name, or is represented by the portrait, some estoppel must be found to exist operating to deprive the latter of what would otherwise be his right.

421. CREEDMORE CARTRIDGE CO.

April 25, 1891. 56 O. G., 1333.

FROTHINGHAM, Acting Commissioner:

Name of Corporation.—The mere name of a corporation will not be registered as a trade-mark.

422. FINLEY & BRUNSWIG.

February 25, 1892. 49 MS. D., 362.

FROTHINGHAM, Acting Commissioner:

“Liebig’s Diarrhœa Cordial.”—The words “Liebig’s Diarrhœa Cordial” should not be registered as a trade-mark for diseases of the stomach, first, because Liebig is the name of a great food chemist, and the use of his name on a cordial would naturally lead the purchaser to suppose that the cordial was made by Liebig or according to his formula; and second, no one has the right to use Liebig’s name without his consent.

423. BLOOD & CO.

February 25, 1893. 50 MS. D., 134.

FROTHINGHAM, Acting Commissioner:

“Blood & Co.’s Enamel Finish.”—The words “Blood & Co.’s Enamel Finish” should not be registered as a trade-mark for “paints for inside woodwork,” because enamel paints are common in the arts; any person has a right to use the phrase to designate a finish coat of paint which has a surface resembling enamel. Since these words cannot constitute a trade-mark by themselves, they cannot be made to do so by annexing the name of the proprietor thereto.

424. DUNLAP.

July 31, 1894. Endorsed.

SEYMOUR, Commissioner:

“Dunlap Carpet”—Refused.—It was contended that the words “Dunlap Carpet” was not merely the name of the applicant and should be registered as a trade-mark for carpets, but the examiner’s refusal to register was affirmed.

425. CRAWFORD MFG. CO.

August 22, 1895. 57 MS. D., 380.

FISHER, Acting Commissioner:

“Crawford”—Geographical and Name of Applicant.
The word “Crawford” should not be registered as a trade-mark, since it is geographical in character, and it is also the salient part of the name of the applicant.

NUMERALS.

426. DAWES & FANNING.

January 10, 1872. C. D. 1872, 12.

LEGGETT, Commissioner:

Number "140," for Umbrellas.—The number "140" may be registered as a trade-mark for umbrellas.

427. EAGLE PENCIL CO.

November 21, 1876. C. D. 1876, 241.

DOOLITTLE, Acting Commissioner:

Numerals in Connection With Fractions.—It being customary in the trade to adopt numerals and letters on lead pencils, such as 1, 2, 3, etc., to signify their quality or degrees of hardness, to use a fraction in connection with the numeral such as $1\frac{1}{2}$, $2\frac{1}{2}$, $3\frac{1}{2}$, etc., would signify to the public the same fact, and those numbers should not be registered as a trade-mark.

PATENT.

428. KING.

September 19, 1870. C. D. 1870, 109.

FISHER, Commissioner:

A Trade-Mark Should Not Be Patented as a Design.

A device consisting of applicant's portrait, surrounded by the British coat of arms, certain words denoting the character of the goods, directions for using and applicant's *fac-simile* signature, should not be patented as a design, since the only clause of the design statute under which such device could fall is "Any new and original impression, ornament, pattern, print, or picture to be printed, painted, cast, or otherwise placed on or worked into any article of manufacture." This manifestly refers to the external ornamentation of manufactured articles, and it is only by a forced construction of the clause that designs which were to be used only as trade-marks could be included within it. But the subject is relieved of all difficulty by the trade-mark statute, which provides for the protection of such devices.

429. RICHARDSON ET AL.

February 7, 1873. C. D. 1873, 23.

LEGGETT, Commissioner:

"Richardson's Patent Union Leather-Splitting Machine."—The patent under which the machines upon which this mark is to be used has expired. *Held*, that this being so, it would be a fraud upon the public to register the above mark; and even if the word "patent" was stricken out, the machines having become known under the name "Union," that name becomes public and should not be registered.

430. LEE & SHEPARD.

September 8, 1883. C. D. 1883, 66.

MARBLE, Commissioner:

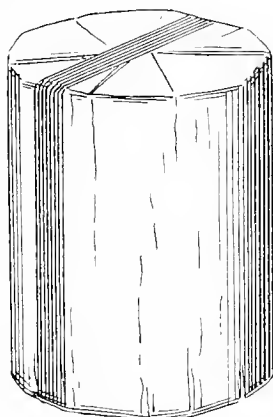
Matter Patented as a Design Should Not Be Afterwards Registered as a Trade-Mark.—While it is true that a design may be used as a trade-mark, the office after having patented certain matter as a design to one party should not grant registration to a different party for substantially the same matter as was covered by the design patent.

431. GOODWIN & CO.

November 23, 1878. 19 MS. D., 112.

DOOLITTLE, Acting Commissioner:

Patented Device — Ornamentation.—This trade-mark consists essentially of a strip of uniform width extending along the side of a package, the strip contrasting in color with the package. Registration refused. 1st, because the mark is the subject-matter of a claim in a patent, and since a trade-mark remains in force thirty years, to permit the same to be protected so as to give its exclusive use to a patentee long after his patent had expired would be a fraud on the public (Con. Fruit Jar Co., 14 O. G., 269); 2d, the alleged mark is ornamental in character. It is not meant to hold that a trade-mark is objectionable because it is ornamental, but it must be clear that it is not used as matter of ornamentation alone, but that it has the independent quality of distinguishing the goods of one manufacturer from the same goods made by another.



Applicants' Mark.

432. CONSOLIDATED FRUIT JAR CO.

August 26, 1879. C. D. 1879. 223.

PAINE, Commissioner:

Patented Article—Generic Mark.—The name of a patented article which was a valid common-law mark prior to July 8, 1870, cannot be registered for a period to extend beyond the expiration of the patent. The validity of a trade-mark is not affected by the fact that its owner is the owner of a patent covering the article to which the mark is applied. A generic term cannot be monopolized by a subsequent adopter, but the fact that a mark has become generic does not prevent its continued use and registration by the person whose use made it generic.

433. GLINES.

September 21, 1876. 17 MS. D., 148.

DUELL, Commissioner:

“Rubber Roofing,” for Roofing Material.—The words “Rubber Roofing” as applied to roofing material of which rubber forms a constituent is objectionable on account of descriptiveness. The contention that applicant’s case should be regarded with special favor on account of his being the owner of the patent under which the roofing is made is of little force, as the rights of other patentees would be prejudiced if they were inhibited from designating their inventions by a title which is particularly appropriate.

434. KING.

December 17, 1888. 49 O. G., 119.

HALL, Commissioner:

Representations Patented as Designs Not Barred from Registration as Trade-Marks.—The fact that the Grand Army of the Republic have previously obtained a design patent for this representation, the term of which has expired, does not constitute a legitimate bar to the employment of this design as a trade-mark in commerce with foreign nations. The mere fact that the organization originated the

design would make no difference whatever if the design has been donated to the world to be used in all the ways of which it is capable. The Grand Army of the Republic retained no proprietary right after the term of their design patent expired. There is no property in the design itself vested in any one. Any person may apply the design as a trade-mark to a certain class of merchandise, and when thus applied it acquires the quality of property and becomes vested in him who first makes such new and distinct application of the design, and registration will be granted, provided the applicant has complied with all the requirements of the statute and the mark is used in commerce with foreign nations.

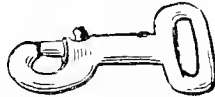
435. COVERT MFG. CO.

October 17, 1878. 19 MS. D., 63.

DOOLITTLE, Acting Commissioner:

"Covert Snap," for Snaps.—The snap upon which the words "Covert Snap" have been used was patented in 1868 and 1873. These words constitute the proper name of the article, and neither under the common law nor under the statute are they proper subject-matter for registration. (See Consolidated Fruit Jar Co., 14 O. G., 269).

COVERT SNAP



Applicants' Mark.

436. REED.

September 24, 1890. 44 MS. D., 246.

MITCHELL, Commissioner:

"Tablet" Snuff.—Applicant had on file an application for a patent for snuff compressed into the form of flat disks like tablets. *Held*, that the registration of this word as a trade-mark for snuff would operate to prevent the sale of snuff in tablet form by those who could as truthfully as applicant say that their compressed snuff was in tablets, and registration therefore should be refused.

437. NEWHALL.

May 20, 1891. 47 MS. D., 22.

MITCHELL, Commissioner:

Design — Trade-Mark. — Applicant's trade-mark for silverware consisted of the representation of an old woman and a cat. He showed it as represented in relief upon the handle of a spoon. The examiner rejected it upon the ground that it was the subject-matter of a design patent. *Held*, that the representation of the old woman and cat was proper trade-mark matter, and that any ornamental suggestiveness which it possessed was immaterial, but that applicant should show his mark disconnected from the spoon.

438. SILVERMAN BROS. & CO.

November 26, 1890. 44 MS. D., 448.

MITCHELL, Commissioner:

"Harris Wire Buckle." — The examiner refused to register the words "The Harris Wire Buckle" for suspenders on the ground that these words only advertised that the buckle invented by Harris and protected by patent was used upon applicants' merchandise. Applicants contended that the words indicated not that the buckles were patented by Harris, but that they were made by applicants. *Held*, that from the foregoing it was evident that a question of fact had arisen which it would be necessary to settle before determining this case, and it was remanded to the examiner to give the applicants an opportunity to prove their contention. (See next decision.)

439. SILVERMAN BROS. & CO.

October 10, 1891. 48 MS. D., 228.

SIMONDS, Commissioner:

"Harris Wire Buckle." — The preceding decision only leaves the question to be decided whether the evidence adduced by applicants support their contention. *Held*, that it does, and without passing on the main question, regarding that as settled in the preceding decision, the decision of the examiner is overruled.

PRACTICE.

440. ENGLISH.

November 2, 1870. C. D. 1870, 142.

FISHER, Commissioner:

Three Marks in One Application.—X or XX or XXX should not all be registered in one registration, X being as distinguishable from XX or XXX as X is from Y or Z.

441. VIDVARD & SHEEHAN.

June 29, 1875. C. D. 1875, 85.

THACHER, Commissioner:

Sufficiency of Oath—Certificate of Correction.—The statute does not require that the oath shall be in the exact words of the section but only “*to the effect,*” etc.

When an error in a certificate of registration occurs solely on the part of the office it will be corrected without expense to the registrants.

442. WATSON, MCGILL ET AL.

April 21, 1876. 16 MS. D., 467.

DOOLITTLE, Acting Commissioner:

Fac-simile Need Not Include Unessential Features. While it is true that the law requires *fac-similes* of the trade-mark to be filed in the office, this cannot reasonably be construed to mean that the *fac-similes* should contain the unessential portions of said trade-marks.

443. BLACK & SONS.

June 16, 1876. 17 MS. D., 32.

DUELL, Commissioner:

New Matter.—The amendment of a proposed trade-mark in a matter material to its identity changes its character and renders the sworn statement required by section 4938 inapplicable. The effect is to create a new trade-mark. Such amendment cannot therefore be allowed.

444. RUBBER CLOTHING CO.

June 28, 1876. C. D. 1876, 159.

DUELL, Commissioner:

Affidavits of Disinterested Parties Should Be Required to Show a Name to Have Been Used as a Trade-Mark Prior to July 8, 1870.—While a mere name may be registered as a trade-mark where it is shown to have been used as a trade-mark prior to July 8, 1870, the affidavit of disinterested parties who have a knowledge of such use should be required before registration.

445. MANNY & CO.

June 22, 1877. 17 MS. D., 155.

DOOLITTLE, Acting Commissioner:

Unnecessary to Mention Every Species of Goods Included in a Large Class.—Applicants state that they are engaged in the manufacture of agricultural implements generally. *Held*, that it was unnecessary to mention every particular description of goods comprised in such class.

446. DOLE BROTHERS.

September 20, 1877. C. D. 1877, 117.

DOOLITTLE, Acting Commissioner:

“Egg Macaroni”—Not a Valid Trade-Mark in Use July 8, 1870.—The words “Egg Macaroni,” known long before applicants used them in 1868 to have a definite meaning, do not come under the exception to the statute forbidding

registration of descriptive terms because of being "rightfully in use on the 8th day of July, 1870," especially since it does not appear from applicants' proofs that they used those words alone as his trade-mark.

447. KNOX.

October 12, 1877. 18 MS. D., 90.

SPEAR, Commissioner:

Certainty in Essential Features Unnecessary.—Applicant stated his essential features to be the representation of two birds. His statement set forth that the exact shape of the birds, or whether with wings closed or displayed, was immaterial. *Held*, that the mark was set forth with sufficient distinctness, and that if the statement did not misrepresent the mark or describe it too broadly or failed to describe it distinctly so that injury might arise to the public, the office should not be particular to inquire into other matters which might be considered mere matters of taste.

448. DWYER.

April 10, 1878. Endorsed.

SPEAR, Commissioner:

Specification Need Only Conform to the Requirements of the Statute.—Where a specification conforms to the requirements of the statute, that is sufficient; it need not agree with the forms in the Rules of Practice.

449. ROXBURY CARPET CO.

July 13, 1878. 18 MS. D., 423.

DOOLITTLE, Acting Commissioner:

"A Line of Color Running the Length of the Fabric." Sufficiently Definite.—It is a mistake to say that "A line of color running the length of the fabric" does not sufficiently define applicant's trade-mark. The essence of the mark lies in its contrasting color, whether white, black, or any other color, as long as it is strikingly distinguishable from the body of the fabric. Applicant should not be confined to any one color when the real arbitrary character would thus escape adequate protection.

450. PEPER.

August 26, 1879. C. D. 1879, 221.

PAINE, Commissioner:

“Corn” and Representation of Same.—Alternative forms of trade-marks seem to be warranted by the authorities, but both of such forms should be shown in the *fac-simile*.

451. GOODWIN & CO.

May 10, 1880. 21 MS. D., 69.

DOOLITTLE, Acting Commissioner:

Registration of Same Mark.—Although the statute prohibits the office from registering a mark belonging to a different owner, it does not prohibit the same owner from registering his mark, if thereby he can, by a correction in description, better protect his own rights and at the same time not injuriously affect the rights of others.

452. KEPPLER & SCHWARZMANN.

May 2, 1881. Endorsed.

STOCKBRIDGE, Acting Commissioner:

Name of Foreign Nation With Which Applicants Have Commerce.—It is clearly within the power of the commissioner to require applicants to set forth the foreign nation with which the applicants have commercial relations.

453. STRASBURGER & CO.

May 28, 1881. C. D. 1881, 23.

MARBLE, Commissioner:

Examination—Only Lawful Marks Should Be Registered.—Under the Trade-mark Act of March 3, 1881, examination should be made of the presumptive lawfulness of a mark proposed for registration. That act did not so essentially change the trade-mark law as to warrant the office in registering as a trade-mark matter which the courts would not regard as such.

454. STRASBURGER & CO.

May 28, 1881. C. D. 1881, 23.

MARBLE, Commissioner:

The Particular Nation With Which Foreign Commerce is Had.—Under section 3 of the Act of 1881, the applicants will be required to specify some particular foreign nation or Indian tribe with which they have commercial relations.

455. MAW, SON & THOMPSON.

October 28, 1881. 22 MS. D., 403.

MARBLE, Commissioner:

Druggists' Sundries—Too Indefinite.—Applicants stated that "The particular classes on which we use the trade-mark are surgeons' instruments and appliances, hair, tooth and nail brushes, feeding bottles and druggists' sundries of all kinds." *Held*, that the words "druggists' sundries" signified no particular kind of goods, and applicants should be required to specify what was included under that term.

456. LYON, DUPUY & CO.

July 1, 1884. C. D. 1884, 29.

DYRENFORTH, Acting Commissioner:

Ownership—Registration Under Statute of 1870 Valid Reference.—The statute provides that a trade-mark to be registrable must be used in foreign commerce, but it does not by any fair intendment convey the idea that a party may acquire the right to use another's mark merely by using it in such trade; and as a registrant must be one entitled to the exclusive use of a mark, a registration under the law of 1870 is a valid reference.

457. ARMSTRONG & CO.

September 19, 1884. 26 MS. D., 260.

DYRENFORTH, Acting Commissioner:

Irrelevant Matter.—Matter not necessary to a description of the trade-mark or of the *fac-simile* presented, and not shown in the *fac-simile* on file, should be canceled, and the forms given in the rules followed as nearly as possible.

458. BALAS FRERES.

February 25, 1885. 27 MS. D., 336.

BUTTERWORTH, Commissioner:

Refusal to Register Because of Pending Application. The examiner refused to register the above applicants' trade-mark because of the pendency of an application by a previous applicant whose application was not in proper form for an interference. *Held*, that an interference should not be declared until the previously filed application was in proper form, nor should the present applicants' mark be registered until they established their *prima facie* right to the mark as between themselves and the previous applicant.

459. HAMILTON DISINFECTANT CHEMICAL WORKS.

February 26, 1885. 27 MS. D., 342.

BUTTERWORTH, Commissioner:

Indefiniteness in Setting Up Trade-Mark. — Where applicant shows and describes a plain Greek cross as its trade-mark, it should not be allowed to state that the pictorial representation "may represent any recognized form of cross," because the forms of crosses are so dissimilar that if this description were allowed the effect would be to cover at least eleven distinct devices by a single registration.

460. ORD.

July 2, 1886. 31 MS. D., 128.

MONTGOMERY, Commissioner:

Substitute Oath — Amendment of Oath. — Where the applicant was a foreigner and did not state in his oath that his trade-mark was used in commerce between the United States and any foreign country, *held*, that a substitute oath should be required. *Held*, also, that for reasons of economy, or of office convenience, or both, which seem to be sufficient, Rule 12 provides that oaths or declarations cannot be amended; and this rule should be followed, although it might work a hardship in the present case.

461. TURNEY v. OREGON INDIAN MEDICINE CO.

November 18, 1886. 32 MS. D., 135.

VANCE, Acting Commissioner:

Date of Use Set Up May Be Amended.—Rule 12, which states that “No amending will be admitted unless warranted by something in the statement or *fac-simile* as originally filed,” does not apply to the date of use set up in the application, which may be amended in the same way as a preliminary statement in an application for patent.

462. KIMBALL.

May 3, 1887. C. D. 1887, 54.

DOOLITTLE, Acting Commissioner:

Only One Mode of Using the Mark Should Be Shown. One *fac-simile* is sufficient to illustrate the mode of using the mark. It only encumbers the records of the office and renders the description of the mark unnecessarily prolix to allow several different forms of labels or prints to be described and filed.

463. JONES.

July 6, 1887. 34 MS. D., 455.

HALL, Commissioner:

Appeal Premature Without a Second Action.—An appeal from the decision of the primary examiner is premature if taken before a second action.

464. CAMP.

September 7, 1887. 35 MS. D., 169.

VANCE, Acting Commissioner:

Effect of Registration Under Act of 1870.—As a trade-mark does not derive its validity from registration but from its adoption and use, a trade-mark registered under the Act of 1870 is a pertinent reference. (*Ex parte Lyon et al.*, 28 O. G., 191.)

465. ORFORD COPPER CO.

March 26, 1888. 36 MS. D., 346.

HALL, Commissioner:

“O. C.” or “O. A.” or “O. E. C.” Cannot Be Claimed in the Same Application.—Applicant showed in Fig. 1 the letters “O. E. C.,” in Fig. 2 the letters “O. A.” and in Fig. 3 the letters “O. E.” He stated that “O. C.” had been used since January 1, 1881, “O. A.” since January 1, 1885, and “O. E. C.” since January, 1887. *Held*, that if one of these can be a trade-mark the others can also, and there are necessarily three trade-marks, which cannot all be claimed in the same application.

466. KIRKER, GREER & CO., LIMITED.

July 19, 1888. 37 MS. D., 392.

HALL, Commissioner:

Statement and Declaration Must Be Signed By Member of the Firm.—Where the application was made by a firm and the declaration and statement was signed by one Greer, as *director* of the firm, *held*, that the declaration and statement must be signed by a *member* of the firm, unless the applicants could show that under the statutes of England, where it was located, that a limited partnership could only attach its signature by a member of the firm. If that be true, the office can assume that Greer was a member of the firm.

467. KING.

December 17, 1888. 49 O. G., 119.

HALL, Commissioner:

Office Bound by the Oath of Applicant.—The patent office has not the means to investigate the question whether the applicant in the present case is simply seeking to obtain the guise of security around his trade-mark, when he really means to use it as an attractive embellishment for a particular class of persons in this country. The office is bound by the oath of the applicant, and such a question as the above must be settled by the courts.

468. BENGE & CO.

September 4, 1889. 41 MS. D., 39.

FISHER, Assistant Commissioner:

Indefiniteness. — Applicants' trade-mark consists of the figure of a square inclosing the figure of a shield, the shading of the shield being darker than that of the square. He endeavored to broaden it by the statement that in place of the shield any other shaped figure may be used, it being only necessary that one shall be enclosed within the other and the shading of the inner figure be darker than the outer. *Held*, that such a statement was too indefinite.



Applicant's Mark.

469. COLUMBIA SEWING MACHINE CO.

November 4, 1889. 41 MS. D., 228.

MITCHELL, Commissioner:

No Interference Between an Application for Label and a Registered Trade-Mark. — The question as to the title to a trade-mark cannot be inquired into as between a registered trade-mark and an application for a label.

470. ROSS.

July 10, 1890. 43 MS. D., 429.

FISHER, Acting Commissioner:

Pending Application as a Reference. — A rejected trade-mark application is no more a reference for another trade-mark application than is a rejected mechanical application for another mechanical application.

471. HYDE & SONS.

January 19, 1891. 45 MS. D., 246.

FISHER, Acting Commissioner:

“Berlin,” Not Geographical—Burden of Proof.—Where geographical names are used in purely an arbitrary sense they may be lawful trade-marks. Berlin is not noted as a place where the article (cotton goods known as Selisia) is produced. The applicants have no connection with that town, therefore no one would be deceived or wronged. The burden of proof to show that the place is so noted is upon the office.

472. HUDSON.

May 15, 1891. 55 O. G., 1401.

MITCHELL, Commissioner:

Should Be Represented by a Fac-simile.—The Revised Statutes relating to the registration of trade-marks require that the mark shall be represented by a *fac-simile*, the mode of application being indicated by a statement.

When Represented by Drawing.—The rules of the patent office provide that where the trade-mark can be represented by a *fac-simile* that conforms to the rules for drawings for mechanical patents, such a drawing may be furnished by the applicant.

Fac-simile Counterpart.—A *fac-simile* is an exact counterpart of an original, and a *fac-simile* represented by a drawing is an exact counterpart of an original so far as the nature of a drawing permits.

What Should Be Represented in Cases of Doubt.—While perhaps it would be going too far to require in all cases that the trade-mark and nothing but the trade-mark be represented in the drawing, it is certainly within the discretion to the office to so insist where otherwise legitimate doubts would arise as to whether protection should not be sought through the law relating to designs.

Fac-similes.—The cases are very rare in which the registration of a trade-mark requires or should permit of the representation of any other matter than the *fac-simile* of the trade-mark itself.

473. NEWBOLD.

May 20, 1891. 47 MS. D., 22.

MITCHELL, Commissioner:

What Constitutes Fac-imile.—A *fac-simile* of a trade-mark is a representation of the mark without less or more.

474. ARCHER.

October 14, 1891. 57 O. G., 410.

SIMONDS, Commissioner:

Illustrations for Record.—Illustrations of a trade-mark presented for record by the applicant must conform substantially as to shape and size with the rules governing drawings of patents.

475. EMPIRE MILL CO.

December 24, 1891. 49 MS. D., 112.

FROTHINGHAM, Assistant Commissioner:

Registration Under Act of 1870 as a Reference.—Applicant's mark was the words "White Lillie." The reference showed the identical mark, but it was registered under the Act of 1870. *Held*, that in view of the clause of the Act of 1881 forbidding the registration of a mark "which is identical with a registered or known trade-mark owned by another," registration was properly refused.

476. HAGGENMACHER.

June 27, 1892. 60 O. G., 438.

SIMONDS, Commissioner:

Foreign Applicant—Rule Where "Location" and "Citizenship" are at Variance.—Where an applicant for a trade-mark appears on the record as "located" in a foreign country other than that of which he is a citizen, his application will be governed by the existing treaty, convention or law of the country of location, rather than that of citizenship.

477. AMERICAN LEAD PENCIL CO.

September 27, 1892. 61 O. G., 151.

SIMONDS, Commissioner:

Effect of Registration Under Act of 1870 for Purposes of Interference With Present Application. — Where the subject-matter of application for trade-mark is clearly anticipated by a mark registered under the Act of 1870, and the examiner properly refused to declare an interference because of the nullity of such prior registration, and also properly refused registration to the present applicant because the prior registry makes the mark an anticipation, *held*, the proper course for the office in such a case is to give the applicant under the law of 1870 notice that an application is pending with which his registry would interfere if it were under the existing act and allow him sixty days to make a new application.

478. LANGDON ET AL.

October 7, 1892. 61 O. G., 288.

SIMONDS, Commissioner:

Joint Owners — Independent Registration by One. An applicant will not be granted independent registration of a trade-mark when it appears that he is one of two or more parties who have a right to use such mark, section 2 of the Trade-mark Act requiring it to appear that beside the applicant "no other person, firm or corporation has the right to such use."

479. SHAW BROTHERS.

August 1, 1894. Endorsed.

SEYMOUR, Commissioner:

Not Necessary to Specify that Trade-Mark is Used on the Merchandise Recited. — The examiner refused registration on the ground that applicant did not state in his declaration that the trade-mark was used by applicants on the *merchandise recited* in common with foreign nations. The declaration did state that the trade-mark was used by applicant in commerce with the Germans, etc., without stating it was used on the *merchandise recited*. The examiner overruled.

480. DULUTH IMPERIAL MILL CO.

May 31, 1893. 52 MS. D., 379.

FISHER, Assistant Commissioner:

"The Representation of a Dog"—Too Indefinite.—Applicant stated that its trade-mark consisted of the "representation of a dog." *Held*, that this was too indefinite. Applicant may properly secure registration of the particular representation shown, leaving for the determination of the courts whether or not any other representation of a dog than that shown is an infringement of such trade-mark. (Brown on Trade-marks, paragraphs 89 and 588.)



481. BONNELL CO.

July 10, 1893. 52 MS. D., 461.

FISHER, Assistant Commissioner:

Date of Adoption—Prolivity.—The action of the examiner, holding that the statement regarding the date of adoption and use of the trade-mark should be abridged as unnecessarily prolix, overruled.

482. LEVEQUE & LAWTON.

June 30, 1894. 55 MS. D., 77.

FISHER, Assistant Commissioner:

Two Rejections Necessary Before Appeal Can Be Taken.—The examiner's first action was to inform the applicant that "this application as presented was in no condition for action." The second action was a rejection. Applicant then took his appeal. *Held*, that such appeal was premature.

483. COLMAN.

December 6, 1894. 55 MS. D., 414.

FISHER, Assistant Commissioner:

Prior Invalid Registration.—The examiner stated that in his opinion the applicant has clearly established his right to register, but that he did not feel at liberty to grant such registration, in view of a trade-mark registered November 10, 1894. *Held*, that registration should be granted.

484. DAVIS & CO.

December 30, 1895. 58 MS. D., 167.

FISHER, Acting Commissioner:

"Silver Club" and Photographs of Four Congressmen Not Registrable Without Consent of Those Men.—The words "Silver Club" and the photographs of four congressmen noted for their advocacy of free silver, refused registration unless accompanied by the consent of said congressmen.

485. JANOWITZ.

March 25, 1895. 56 MS. D., 301.

FISHER, Assistant Commissioner:

Essential Features — Definiteness of.—A trade-mark for corset stays, the essential features of which were stated to be “A parallelogram divided diagonally into two triangles, one dark and the other light,” was objected to by the examiner as indefinite, since the words “dark” and “light” include many shades. The examiner overruled, since the essential features of applicant’s mark were a parallelogram divided diagonally into two triangles of contrasting colors.

T. M.—11

PRINT.

486. WHITMAN & SON.

December 23, 1891. 49 MS. D., 98.

FROTHINGHAM, Assistant Commissioner:

Label Containing Trade-Mark Matter.—A label consisting of the words “Whitman’s Celebrated Commercial Chocolate,” printed upon a slip having an illustration of a mountainous sea coast and other arbitrary matter, refused registration in accordance with the decision in *ex parte* Ruckstuhl, 56 O. G., 927; upon a rehearing of this case (see 49 MS. D., 360) registration was again refused, since the matter was not pictorially descriptive of chocolate, thus distinguishing this case from *ex parte* Palmer, 58 O. G., 384; upon a second rehearing (see 53 MS. D., 365) registration was again refused.



Applicant's Mark.

487. H. J. HEINZ CO.

January 28, 1893. 62 O. G., 1064.

SIMONDS, Commissioner:

Registration of "Prints" and "Labels" — Purpose.

Under section 3 of the Act of June 18, 1874, relating to patents, trade-marks and copyrights, "prints" as well as "labels" are entitled to registration.

The purpose of the so-called "Label Act" was to relegate to the patent office all registry in the general nature of or akin to copyright of things which are mere adjuncts or appurtenances of articles of trade and to leave to the Librarian of Congress the registry of things whose value in exchange resides in themselves. In any case some spark of intellectual creation must be present. (See *ex parte* Palmer, 50 O. G., 383.)

Until the Supreme Court distinctly says otherwise the label law is, for the patent office, constitutional.

The device sought to be registered consisted of the representation of a cucumber having busts of children thereon, representing them as holding bottles of "H. J. Heinz's" pickles. *Held*, that it is a "mere adjunct or appurtenance of an article of trade," the registry of which is relegated to the patent office by the so-called "Label law," and since it possesses novelty and intellectual merit it may be registered.



Applicants' Print.

488. BOVRIL.

July 24, 1893. 53 MS. D., 1.

FISHER, Assistant Commissioner:

Bovril—Act of 1874.—A print possessing artistic merit, somewhat descriptive of the merchandise it advertises, and intended to be handed about as an advertisement, may be registered as a print. The decisions concerning the registration of prints and labels reviewed and the opinion expressed that it is doubtful whether the commissioner has any right to refuse registration of prints or labels until some court of competent jurisdiction shall declare the Act of June 18, 1874, unconstitutional.



Applicant's Print.

489. SCHLEGAL.

August 16, 1893. 53 MS. D., 91.

FISHER, Assistant Commissioner:

Colors Used in Ordinary Paints.—A device containing a number of designs of different colors, and numbered, having no use other than to assist persons in designating the particular kind of glass goods they wish to order, should not be registered as a print. (*Higgins v. Keuffel*, 55 O. G., 1139.)

REPRESENTATION OF GOODS.

490. SPENCER.

July 15, 1873. 14 MS. D., 132.

LEGGETT, Commissioner:

Representation of Lathe for Lathes.—It being common for manufacturers to advertise their products by means of pictures representing them printed in public journals, etc., together with the name of the dealer and the name of the article, the representation of an overhead countershaft laid across the bed of the lathe with applicant's name over it and the words "Standard Lathes" under it, should not be registered as a trade-mark for lathes, since it is not sufficiently distinctive in character to distinguish applicant's lathes from those of other manufacturers.

491. PRATT & FARMER.

November 27, 1876. C. D. 1876, 244.

DOOLITTLE, Assistant Commissioner:

Representation of Goods.—The figure of a fish when applied to lines used for the purpose of fishing, and well known in trade as intended for that purpose, has no more arbitrary or fanciful signification than the figure of a boot in front of a shoe shop or upon the article itself. Any maker of fish lines has the right to use this symbol instead of the word "Fish."



492. ST. LOUIS BEEF CANNING CO.

June 7, 1878. 18 MS. D., 183.

DOOLITTLE, Acting Commissioner:

"Figure of an Ox for Canned Meats."—The figure of an ox, as applied to canned meats of all descriptions, cannot be regarded as entirely descriptive, especially in view of the fact that the name of the animal represented by the figure would not be the commercial name of the article to which the symbol is attached.

493. HALLIDAY BROTHERS.

June 18, 1879. C. D. 1879, 197.

PAINE, Commissioner:

Representation of Barrel for Barrels or Sacks of Flour.—A representation of a barrel consisting of light and dark wood, the staves being alternately composed of each color, cannot be registered as a trade-mark for flour put up in barrels of alternately light and dark staves, because pictorially descriptive of the goods, but may be registered as a trade-mark for flour put up in sacks or barrels having staves all of one color, such mark not being descriptive of goods put up that way.



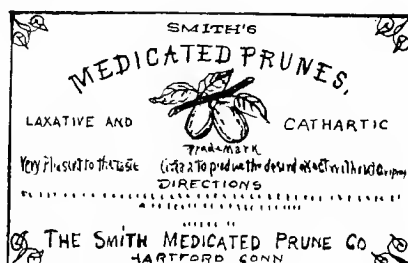
Applicant's Mark.

494. SMITH, ISAAC D.

August 29, 1879. C. D. 1879, 222.

PAINE, Commissioner:

"Smith's Medicated Prunes" and Representation of Same.—The words "Smith's Medicated Prunes," associated with a pictorial representation of a part of a twig, three leaves and two prunes, are not registrable as a trade-mark for medicated prunes.

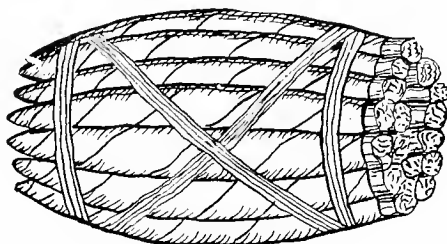


495. ROSENBERGER & CO.

June 6, 1896. 59 MS. D., 162.

FISHER, Acting Commissioner:

Bundle of Cigars, for Cigars.—Stripes on the face of a representation of a bundle of cigars should not be registered as a trade-mark for cigars, because the entire device is substantially a representation of the merchandise and as such is purely descriptive in character (*ex parte* Pratt & Farmer, 10 O. G., 866, and *ex parte* Smith, 16 O. G., 679).



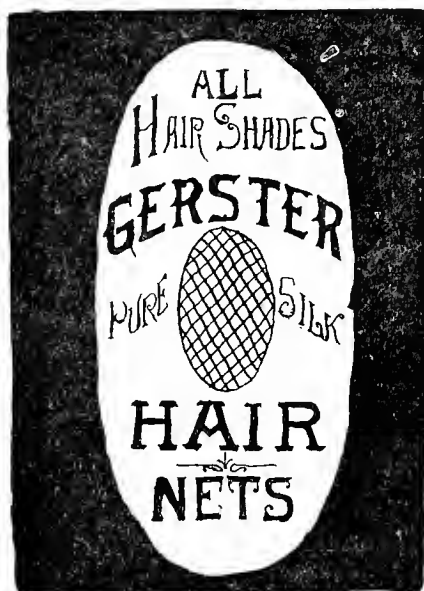
Applicant's Mark.

496. JENNINGS & SONS.

October 11, 1883. 25 MS. D., 67.

MARBLE, Commissioner:

Hair Net on an Oval Figure.—The representation of a hair net on an oval figure, as applied to hair nets, is not simply the representation of the goods on which it is used, and, while suggestive of such goods, may be registered as a trade-mark, provided the claim be limited to the representation shown.



Applicants' Mark.

497. HURLBURT MFG. CO.

November 30, 1889. 41 MS. D., 351.

MITCHELL, Commissioner:

Representation of Goods.—The representation of a wagon brake, attached to the panel of a wagon body, with whip-socket and whip, possesses sufficient arbitrary matter over the representation of a wagon-brake lock to entitle it to registration as a trade-mark for wagon-brake locks. (See No. 573 for *fac-simile*.)

498. HEINZ CO.

March 28, 1891. 46 MS. D., 218.

MITCHELL, Commissioner:

Representation of Meat, Fruit, etc.—A Proper Trade-Mark for Mince Meat.—An alleged label for mince meat, consisting largely of the representation of meat, fruits, spices, etc., *held* to constitute trade-mark matter and therefore not registrable as a label.



499. BUCHANAN & LYALL.

October 12, 1880. 21 MS. D., 397.

MARBLE, Commissioner:

Name and Representation of Goods.—Applicants' mark consisted of their names and a border, three sides of which were formed of representations of larger and smaller sizes of plug tobacco, while the fourth formed a kind of open panel for the firm name, etc. The examiner refused registration, holding the design to be only applicants' name and the representation of their goods. *Held*, that it was something more than that. The design possessed sufficient arbitrary quality to render it registrable.

REFUNDMENT OF FEE.

500. THAYER.

January 17, 1891. 54 O. G., 957.

SHIELDS, Assistant Attorney General:

Rejected Application for Registration of Trade-mark—Repayment of Fees.—There is no authority for the repayment of fees paid in trade-mark cases where registration is refused.

501. BASSETT.

May 12, 1891. 55 O. G., 997.

MITCHELL, Commissioner:

Issuance of Certificate to Assignee.—A certificate of registration of a trade-mark will not be issued to the assignee of the applicant, even though the assignment may have been previously recorded.

502. COVENTRY MACHINIST CO.

May 13, 1892. 50 MS. D., 218.

FROTHINGHAM, Assistant Commissioner:

Mistake of Law.—The Coventry Machinist Co. filed an application for registration of a certain trade-mark. Subsequently A. S. Hill, who was the agent of said company, filed an application for the same mark. Hill afterwards asked that the fee paid on the application filed by him be refunded. *Held*, that Hill's mistake was one of law, consisting in the agent thinking that he had the right to register the mark when as a matter of fact only the principal had such right, and Hill's request was refused.

503. LEISON.

June 6, 1892. 50 MS. D., 295.

FROTHINGHAM, Assistant Commissioner:

Fee Paid Under Act of 1870.—A partial fee paid for registration under the Act of 1870, that act having been declared unconstitutional, cannot be refunded, the Act of 1881 having determined what disposition was to be made of the fees paid under that act.

504. FINLAYSON, BOUSFIELD & CO.

September 28, 1892. 61 O. G., 152.

SIMONDS, Commissioner:

Refunding Fees Paid by Mistake — Rule 224.—Where the domestic branch of a business firm, having offices in this country and abroad, filed application for trade-mark registration, and subsequently learned that application for the same mark had already been filed through the London agent, *held*, that the second filing was a case of mistake under the law, and the fee refunded.

505. ZWACK & CO.

August 2, 1894. 55 MS. D., 158.

FISHER, Assistant Commissioner:

Fee Paid for Examination.—The refundment of the fee in a rejected trade-mark application refused on the ground that the office had examined the case and the fee was paid for such examination, regardless of whether registration was granted or not.

506. MIYAMOTO.

October 16, 1895. 50 MS. D., 42.

FISHER, Acting Commissioner:

Mistake.—Where applicant's husband had previously filed an application for registration and died, and she, in ignorance of such previous application, filed another for the same mark, *held*, that the fee in the last application might be refunded.

507. HINRICH & CO.

January 30, 1894. Endorsed.

FISHER, Acting Commissioner:

Re-registration—Issuance of Trade-Mark Certificate to Assignee.—March 20, 1876, C. F. A. Hinrich registered the same mark for the same goods as now applied for by Hinrich & Co. On April 28, 1881, Hinrich asked for re-registration without payment of fee, under the statute of March 3, 1881. This application had been held up on account of a minor objection. On January 10, 1894, the ownership of the mark having meantime vested in Hinrich & Co., a new application was filed on behalf of the firm under the ruling in *ex parte* Bassett, 55 O. G., 997. *Held*, that the fee paid on the last application might be refunded.

508. McDANIEL & MORROW.

March 3, 1894. 54 MS. D., 161.

FISHER, Assistant Commissioner:

Rejected Application.—Applicants contended that since print and label fees are returned on the request of the applicant when registration of his print or label is refused, they should also be refunded when trade-mark applications are rejected. *Held*, that this question having been passed upon in *ex parte* Thayer, 54 O. G., 957, the fee in the present case should not be refunded.

509. ROASTED CEREALS CO.

April 4, 1895. 57 MS. D., 455.

FISHER, Acting Commissioner:

Issuance of Certificate to Assignee.—The Roasted Cereals Co., an applicant for the registration of a trade-mark, transferred its business and trade-mark to the Catskill Mill Co. This latter company requested that the certificate of registration issue in its name instead of in the name of the applicant, the sole question being whether a certificate of registration can issue to an assignee of the applicant. *Held*, that it could not.

STATUTES.

510. BLANCHARD SONS.

April 24, 1871. C. D. 1871, 97.

LEGGETT, Commissioner:

“The Blanchard Churn”—Not the Mere Name of the Applicant.—The Act of Congress of July 8, 1870, provides that “The Commissioner of Patents shall not receive and record any proposed trade-mark * * * which is merely the name of a person, firm or corporation only, unaccompanied by a mark sufficient to distinguish it from the same name when used by other persons.” The only thing about this limitation that is ambiguous is the meaning of the word “mark.” The ruling of the courts indicates that this word, which is synonymous with “trade-mark,” means a word or letter or sign or figure or symbol or device. The expression “The Blanchard Churn” is not the mere name of the person, but the name is accompanied by the marks “The” and “Churn,” and as the expression seems to be a good common-law trade-mark it may be registered.

511. HANKINSON.

June 2, 1875. C. D. 1875, 72.

THACHER, Commissioner:

Carpet Cleaner Not Entitled to Registration of Mark.

A carpet cleaner is not in the strict sense of the term either a merchant or a manufacturer, and a mark used by him upon wagons with which he transports carpets, upon tags attached to the carpets, and upon his business cards, circulars, etc., is not such a trade-mark as can be registered, although the applicant may have a proprietary right in the mark at common law; but since he cannot comply with that clause of the statute requiring that applicants for registration shall state the class of merchandise and the particular description of “goods, etc.,” he is not entitled to registration.

512. DOLE BROTHERS.

September 20, 1877. C. D. 1877, 117.

DOOLITTLE, Acting Commissioner:

“Egg Macaroni” Not a Valid Trade-Mark in Use July 8, 1870.—The words “Egg Macaroni,” known, long before applicants used them in 1868, to have a definite meaning, do not come under the exception to the statute forbidding the registration of decriptive terms because of being “rightfully in use on the 8th day of July, 1870,” especially since it does not appear from applicants’ proofs that they used those words alone as their trade-mark.

513. WARD.

March 22, 1878. Endorsed.

DOOLITTLE, Acting Commissioner:

Circumstances Which Would Not Constitute a Lawful Mark Prior to the Act of 1870.—Applicant’s place of business was at Plymouth. He had used that word as a trade-mark prior to the Act of 1870. *Held*, that what circumstances could have constituted a lawful trade-mark prior to the Act of 1870 must be gathered from the decisions of the courts, and this being the case, applicant had not established his right to the exclusive use of that word, since the decision of the court in *Canal Co. v. Clarke*, 13 Wallace, 311, was against him.

514. WEISMAN & SON.

July 20, 1878. 18 MS. D., 456.

SPEAR, Commissioner:

“Ansatz,” Meaning “Compound,” for Bitters—Mark in Use Before the Act of 1870.—The word “Ansatz,” meaning “compound,” should not be registered as a trade-mark for bitters, since it is descriptive, especially as actually used, being preceded by the word “Bitterer,” meaning “very bitter,” the two words together meaning “very bitter compound;” and it is of no importance that it was in use before the passage of the Act of 1870, for it is not a “lawful” mark and does not become so by virtue of the act in question.

515. BEMIS.

February 9, 1881. 22 MS. D., 42.

MARBLE, Commissioner:

“Toreros” — Bullfighter — Section 4939, R. S.—The examiner's rejection of the word “Toreros,” upon the previously registered word “Bullfighter,” overruled. Neither is applicant inhibited by section 4939, Revised Statutes, from receiving registration of this mark.

516. STRAUSBURGER & CO.

May 28, 1881. C. D. 1881, 23.

MARBLE, Commissioner:

Examination—Only Lawful Marks Should Be Registered.—Under the Trade-mark Act of March 3, 1881, examination should be made of the presumptive lawfulness of a mark proposed for registration. That act did not so essentially change the trade-mark law as to warrant the office in registering as a trade-mark matter which the courts would not regard as such.

517. JACOBY ET AL. V. LOPEZ ET AL.

December 21, 1882. C. D. 1882, 7.

MARBLE, Commissioner:

Registration Under Law of 1870 Not Prima Facie Evidence of Ownership.—All registrations effected under the provisions of the statute of 1870 have lost their status as *prima facie* evidence of present ownership.

518. MOODIE.

September 22, 1884. C. D. 1884, 35.

BUTTERWORTH, Commissioner:

Label Statute Construed.—The proper construction of the label statute is that the subject-matter of an application for a label shall be that which may be properly claimed as a label and not merely subject-matter for a trade-mark. But the statute does not mean to imply that if certain subject-matter is found to be incapable of registration as a trade-mark it can, nevertheless, be registered as a label, for it may not be descriptive of the quality or nature of the goods, and therefore fail to constitute a label.

519. MOODY v. BUTTERWORTH, COM. OF PATENTS.

December 22, 1884. C. D. 1885, 1.

BUTTERWORTH, Commissioner:

Trade-Mark Should Not Be Registered as a Label.

The Supreme Court of the District of Columbia has just decided orally that the law makes it incumbent on the Commissioner to decide in each application whether an alleged label was a trade-mark, and, if the latter, not to register it except as a trade-mark, and upon the payment of the fee of twenty-five dollars fixed by law. The examiner ordered, therefore, to follow that practice.

520. ROSS.

July 10, 1890. 43 MS. D., 429.

FISHER, Acting Commissioner:

Pending Application as a Reference.—A rejected trade-mark application is no more a reference for another trade-mark application than is a rejected mechanical application for another mechanical application.

521. JENKINS.

September 5, 1890. 53 O. G., 759.

FISHER, Acting Commissioner:

Foreign Commerce as a Basis of Registration.—While the fact that flour from Vienna, Austria, is not on sale upon this market would not of itself authorize registration, when foreign commerce is invoked as a basis of registration, it does not appear in the present case that flour from Vienna, Austria, has any reputation in the markets of the world or that the word "Vienna" would indicate to a purchaser that the flour upon which it was used came from that city.

522. MANITOWOC MFG. CO. v. DICKERMAN.

November 18, 1891. 57 O. G., 1721.

FROTHINGHAM, Acting Commissioner:

Burden of Proof—Analogy to Practice in Courts of Equity.—In an interference between an applicant for registration and a registrant of a trade-mark the burden of proof

is upon the applicant to overcome the "*prima facie* evidence of ownership" made by the registration of such mark.

The right to registration as between two interfering applicants or between an applicant and a registrant belongs to the one who, if a party to a suit in a court of equity, would be adjudged the owner of the trade-mark.

Ownership.—Whoever is the first to adopt and use a mark in either domestic or foreign trade is the owner of such trade-mark.

Commerce Clause of the Statute—Ownership—Right to Registration.—The commerce clause of the statute merely gives jurisdiction to the patent office and to the United States courts in trade-mark cases arising between citizens of the same State. The common-law owner of a trade-mark is entitled to registration whenever he shall show use "in commerce with foreign nations or with Indian tribes," and he cannot be deprived of his right to such registration by reason of the use of the mark in foreign trade by another person, even though the mark has been registered by such other person.

523. EMPIRE MILL CO.

December 24, 1891. 49 MS. D., 112.

FROTHINGHAM, Acting Commissioner:

Registration Under Act of 1870 as a Reference. Applicant's mark was the words "White Lillie." The reference showed the identical mark, but it was registered under the Act of 1870. *Held*, that in view of the clause of the Act of 1881 forbidding the registration of a mark "which is identical with a registered or known trade-mark owned by another," registration was properly refused.

524. PALMER.

January 13, 1892. 58 O. G., 383.

SIMONDS, Commissioner:

Constitutionality of Law.—Whatever doubts may exist with reference to an act prescribing duties for the patent office, it remains for this office to treat it as a valid part of the law until the Supreme Court declares it unconstitutional.

525. BOVRIL.

July 24, 1893. 53 MS. D., 1.

FISHER, Acting Commissioner:

Bovril — Act of 1874.—A print possessing artistic merit, somewhat descriptive of the merchandise it advertises, and intended to be handed about as an advertisement, may be registered as a print. The decisions concerning the registration of prints and labels reviewed, and the opinion expressed that it is doubtful whether the Commissioner has any right to refuse registration of prints or labels until some court of competent jurisdiction shall declare the Act of June 18, 1874, unconstitutional.

526. MANSKE & CO.

July 24, 1893. 64 O. G., 858.

FISHER, Acting Commissioner:

Registration of Words by Germans.—The word "Germania" may be registered here as a trade-mark by a citizen of Germany, although the German statute makes no provision for registration of words as trade-marks.

527. STATE OF SOUTH CAROLINA.

August 30, 1893. 64 O. G., 395.

SEYMOUR, Commissioner:

Application by a State—Commerce by a State Outside Its Own Limits.—The State of South Carolina applies to register the trade-mark "Palmetto" in the patent office, to be applied by labels to bottles of intoxicating liquors, to be regularly sold by the State outside its own limits in commerce with foreign nations or with Indian tribes.

1. It seems that a State may take upon itself the character of a trading corporation while retaining in other respects the essentials of a sovereign State.

2. While it is not necessary to decide how, if in any manner, a State may enter the domain of commerce, whether by an express authorizing provision in its constitution supplemented by appropriate legislation to carry it into effect, or

otherwise, the executive officers of a State may not, in the absence of legislation, embark the State in such trade.

3. The act of the State of South Carolina, approved December 24, 1892, entitled "An Act to prohibit the manufacture and sale of intoxicating liquors as a beverage within this State, except as herein provided," is a measure for the suppression of the liquor traffic within the State by private individuals and to substitute therefor its complete control by the State, and is not a law which authorizes a regular trade in liquors by way of sale to foreign purchasers.

4. The State of South Carolina, notwithstanding the acts of its Governor and State Board of Control, has no authorized trade in liquors outside of its own limits. It is not the owner of any trade-mark, has not at this time the right to the use of the trade-mark sought to be registered, and therefore —

5. The application is denied.

TREATY.

528. MOIT & CHANDON.

March 12, 1878. 18 MS. D., 259.

SPEAR, Commissioner:

Effect of Prior Registration in France.—The fact that a mark is lawful in a foreign country is no test of its registrability here. The treaty with France touching trade-marks creates no exception to this well-recognized principle of law (Story, Conflict of Laws, sec. 32 *et seq.*), nor does the statute on which registration in this country is based.

529. ATTORNEY GENERAL'S OPINION.

April 5, 1889. 47 O. G., 398.

Treaty for the Protection of Industrial Property — Legislation for the Enforcement of the Treaty Necessary. This treaty is a reciprocal one. Each party to it covenants to grant in the future to the subjects and citizens of the other parties certain special rights, in consideration of the granting of like special rights to its subjects and citizens. It is a contract operative in the future intraterritorially. It is therefore not self-executing, but requires legislation to render it effective for the modification of existing laws.

530. HAGGENMACHER.

June 27, 1892. 60 O. G., 438.

SIMONDS, Commissioner:

Foreign Applicant — Rule where "Location" and "Citizenship" are at Variance. — Where an applicant for a trade-mark appears on the record as "located" in a foreign country other than that of which he is a citizen, his application will be governed by the existing treaty, convention, or law of the country of location rather than that of citizenship.

531. MANSKE & CO.

July 24, 1893. 64 O. G., 858.

FISHER, Acting Commissioner:

Registration of Words by Germans.—The word “Germania” may be registered here as a trade-mark by a citizen of Germany, although the German statute makes no provision for registration of words as trade-marks.

532. SCHMIDT.

July 24, 1893. 53 MS. D., 7.

FISHER, Assistant Commissioner:

Registration of Words for German Citizens.—The word “Goliath” may be registered as a trade-mark to a citizen of Germany, although that government would not register it, since this country, in the treaty between the United States and Germany, does not require registration in Germany as a condition for registration here, and since although a German citizen cannot become the exclusive owner of a word in Germany he may do so in the United States. This decision differentiated from *ex parte* Haggenmacher, 60 O. G., 438.

533. ZWACK & CO.

January 26, 1894. 55 MS. D., 24.

SEYMOUR, Commissioner:

Registration in Hungary — Red Cross.—Notwithstanding Article 6 of the International Union between the United States and Hungary, the symbol of a red Greek cross, which had been registered in Hungary, should not be registered as a trade-mark for medicinal bitters (*ex parte* Chichester Chemical Co., 52 O. G., 1061), since this bureau has been advised by the Attorney General of the United States (47 O. G., 398) that the International Union has not the force or effect of law in this country, it is therefore not self-executing, but requires legislation to render it effective for the modification of existing laws.

TRADE-MARKS—WHAT WILL CONSTITUTE.

534. KING.

September 19, 1870. C. D. 1870, 109.

FISHER, Commissioner:

A Trade-Mark Should Not Be Patented as a Design.

A device consisting of applicant's portrait surmounted by the British coat-of-arms, certain words denoting the character of the goods, directions for using and applicant's *fac-simile* signature should not be patented as a design, since the only clause of the design statute under which such device could fall is "Any new and original impression, ornament, pattern, print or picture to be printed, painted, cast, or otherwise placed on or worked into any article of manufacture." This manifestly refers to the external ornamentation of manufactured articles, and it is only by a forced construction of the clause that designs which were to be used only as trade-marks could be included within it; but the subject is relieved of all difficulty by the trade-mark statute, which provides for the protection of such devices.

535. DUTCHER TEMPLE CO.

September 21, 1871. C. D. 1871, 248.

LEGGETT, Commissioner:

Place of Business—Length of Use.—A trade-mark need not include either the name of the proprietor or his place of business; and since registry is notice to the world of adoption, it takes the place of long use at common law.

536. SPENCER.

July 15, 1873. 14 MS. D., 132.

LEGGETT, Commissioner:

Representation of Lathe for Lathes.—It being common for manufacturers to advertise their products by means of pictures representing them printed in public journals, etc., together with the name of the dealer and the name of the article, the representation of an overhead countershaft, laid across the bed of the lathe, with applicant's name over it and the word "Standard Lathes" under it, should not be registered as a trade-mark for lathes, since it is not sufficiently distinctive in character to distinguish applicant's lathes from those of other manufacturers.

537. SNYDER.

May 5, 1874. 14 MS. D., 412.

LEGGETT, Commissioner:

"Boston Dental Association."—The applicant, an individual, started business in Chicago and designates herself "Boston Dental Association" and asks registration of the words as a trade-mark. *Refused*, on the ground that the phrase was either deceptive or descriptive, and also objectionable because it was not used on merchandise of any kind.

538. HANKINSON.

June 2, 1875. C. D. 1875, 72.

THACHER, Commissioner:

Carpet Cleaner Not Entitled to Registration of Mark.
A carpet cleaner is not in the strict sense of the term either a merchant or a manufacturer, and a mark used by him upon wagons with which he transports carpets, upon tags attached to the carpets, and upon his business cards, circulars, etc., is not such a trade-mark as may be registered, although the applicant may have a proprietary right in the mark at common law; but since he cannot comply with that clause of the statute requiring that applicants for registration shall state "the class of merchandise and the particular description of goods," etc., he is not entitled to registration.

539. WILCOX & CO.

January 16, 1875. 15 MS. D., 262.

SPEAR, Acting Commissioner:

Plug in the Bung of a Cask.—Applicants' alleged trade-mark consisted of a plug inserted in the bung of a cask containing the article to be sold. *Held*, that this did not possess the proper characteristics of a trade-mark, it being properly a part of the construction of the cask, and, further, has no distinctive characteristic calculated to attract attention so as to distinguish the article from others of its class



Applicants' Mark.

540. KANE & CO.

December 27, 1875. C. D. 1876, 23.

DUELL, Commissioner:

“Galvanized Iron Hoops” — Not a Valid Trade-Mark. Even if applicants were the first to adopt “Galvanized Iron Hoops” for liquor barrels, it would not be sufficiently distinguishable from the same mark on similar barrels to either protect the applicants in the sale of their goods or to afford notice to the public of their ownership.

541. GATES & SEVERANCE.

August 26, 1876. 17 MS. D., 115.

DOOLITTLE, Acting Commissioner:

“Shake” — Mode of Applying to the Merchandise.—Any one is entitled to the use of the word “Shake” upon bottles, the contents of which are to be shaken. Applicants contend that there is exceptional virtue in having the word *blown* in the bottle. If that be true, the name of any place, firm or corporation might in that way be rendered a valid trade-mark, which is apparently absurd.

542. ROSS, TURNER & CO.

January 12, 1877. 18 MS. D., 253.

DOOLITTLE, Acting Commissioner:

“Green Label Thread,” for Thread.—The words “Green Label Thread” are sufficiently arbitrary, if applicants are the first to use green labels on their threads, to warrant their registering it as a trade-mark.

543. BURGER.

March 2, 1877. Endorsed.

DOOLITTLE, Acting Commissioner:

Form of Article.—Peculiar configuration given to a particular article of trade is, if new and original, expressly made by law the subject of a design patent, and there is no provision of law that intimates that such matter can be registered as a trade-mark.

544. TETER.

May 3, 1877. 17 MS. D., 420.

SPEAR, Commissioner:

Red Colored Oil.—Applicant's trade-mark consisted of a red color applied to lamp oil. The quality of the oil for illuminating purposes was not changed by such colorization. The examiner's objection was that the alleged mark entered into the article and became a component part thereof. There had been a patent granted to Porter, No. 146,778, for a method of coloring oil. *Held*, that there was nothing set forth that would justify the office in refusing to register applicant's mark.

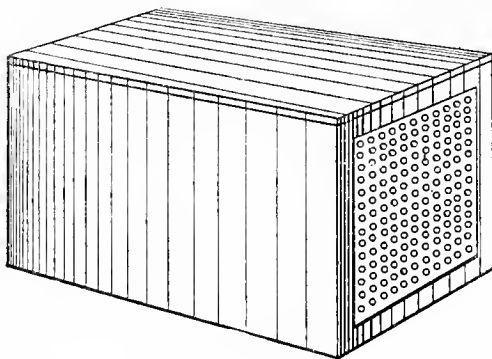
545. SNEIDER.

August 24, 1877. 18 MS. D., 62.

DOOLITTLE, Acting Commissioner:

Perforated Paper Covering for Boxes.—Applicant stated that his trade-mark “Consisted of a series of marks applied to the labels which is placed against the outside of each of the boxes. The mark may be effectively produced by punching or embossing the label, but may also be formed by printing the marks upon said label in suitable colors.” *Held*, that if the applicant had confined himself to a definite and

precise symbol cut out of perforated paper and applied to his boxes the mark might have been registered, but as the case stood there was a comprehensive appropriation of public property.



Applicant's Mark.

546. GORDON.

August 27, 1877. C. D. 1877, 108.

DOOLITTLE, Acting Commissioner:

A Narrow Strip of Leaf Tobacco Placed as a Wrapper Around the Mouthpiece of a Cigarette Not a Trade-Mark

The leaf of tobacco does not perform the *sole* office of a trade-mark, but answers a practical and perhaps a useful purpose—it strengthens the wrapper and is probably more agreeable to the taste than the paper of the cigarette, etc. The useful properties of the article therefore seem to be the predominant ones, while the function the wrapper performs as a trade-mark is merely incidental.



Applicant's Mark.

547. DAUSMAN & DRUMMOND TOBACCO CO.

August 29, 1877. 18 MS. D., 711.

SPEAR, Commissioner:

Marks on Plugs of Tobacco.—Transverse marks impressed upon plugs of tobacco or printed upon paper and pasted thereon as a trade-mark for tobacco was objected to

by the examiner because such marks performed the function of measuring the pieces that were to be cut off by the retail dealer. *Held*, that this was not a valid objection, since it was only a matter of suspicion with the examiner that the marks performed such a function, but it would not invalidate a trade-mark, if besides indicating origin it served some useful purpose.



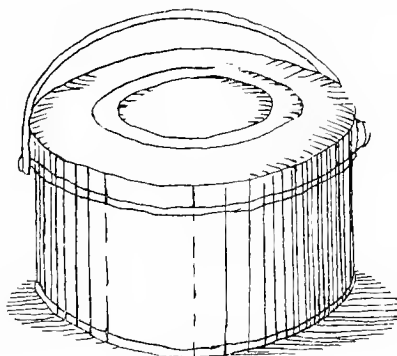
Applicant's Mark.

548. LIBBEY.

October 12, 1877. 18 MS. D., 91.

SPEAR, Commissioner:

Peculiar Shaped Box for Collars.—A peculiar shaped box in which collars are to be placed for sale cannot be the subject-matter of a trade-mark for collars.*



Applicant's Mark.

549. RADER & CO.

April 16, 1878. C. D. 1878, 67.

SPEAR, Commissioner:

"Iron Stone," for Drain and Water Pipes, in Connection With an Oval Figure.—Purely descriptive words inclosed in a simple outline figure, are not sufficiently distinctive from the descriptive words used alone to entitle the mark to registration.

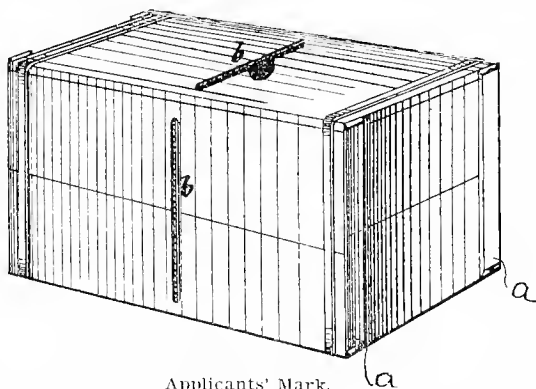
See No. 117 for *fac-simile*.

550. JACOBY & CO.

May 9, 1878. 18 MS. D., 328.

DOOLITTLE, Acting Commissioner:

Part of a Box Is Not Subject-matter for a Trade-Mark. The two upright strips *a a* applied to each end of the box, containing cigars, forms an integral part of the structure, and is no more the subject-matter for a trade-mark than is the lid of the box, its bottom, or side; being to all appearance simply a part of the box, it does not possess the office of a trade-mark (*Gillott v. Esterbrook*, 47 Barb., 457). These remarks do not apply to the central line *b*.



Applicants' Mark.

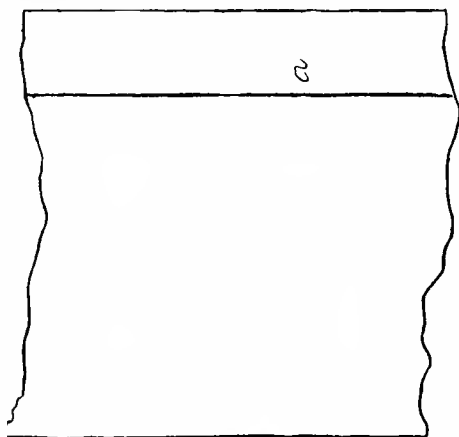
551. ROXBURY CARPET CO.

July 13, 1878. 18 MS. D., 423.

DOOLITTLE, Acting Commissioner:

"A Line of Color Running the Length of the Fabric," Sufficiently Definite.—It is a mistake to say that "A line of color running the length of the fabric" does not sufficiently

define applicant's trade-mark. The essence of the mark lies in its contrasting color, whether white, black or any other color, so long as it is strikingly distinguishable from the body of the fabric. Applicant should not be confined to any one color when the real arbitrary character would thus escape adequate protection.



Applicant's Mark.

552. LANDON.

October 8, 1878. 19 MS. D., 57.

DOOLITTLE, Acting Commissioner:

Trade-Mark Consisting of Distinct Parts.—The fact that applicant's mark is to be found in part upon each of two separate papers would not seem to impair its validity; certainly not at common law, and the statute is silent as to anything to the contrary.

553. BROWN & CO.

October 31, 1878. 19 MS. D., 69.

DOOLITTLE, Acting Commissioner:

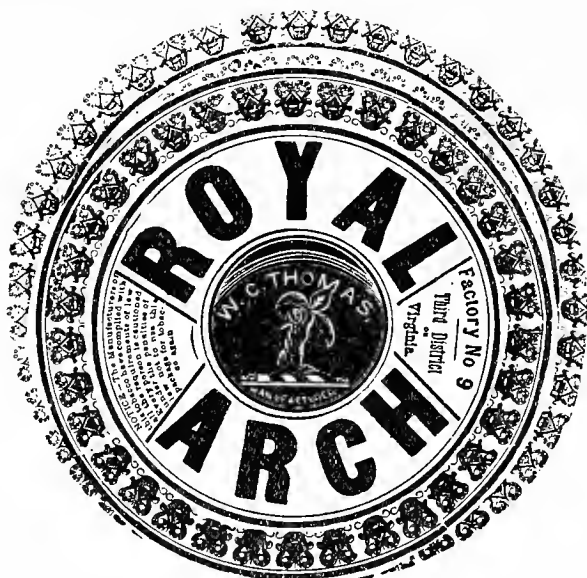
"There's Money In It," for Soap.—It is no uncommon thing for dealers to insert coin in the merchandise they offer to the public, and from the office records it appears that these very applicants have so planned to prepare soap for the trade. To attach the information "There's money in it" to the soap bars either states the truth or else deceives. The law was not intended to foster any such doubtful practice.

554. THOMAS.

November 18, 1878. C. D. 1878, 113.

DOOLITTLE, Acting Commissioner:

Masonic Symbols May Form Elements in a Valid Trade-Mark.—The plea of public policy could hardly justify the office in holding that the symbols and emblems of secret or other organizations were the exclusive property of such societies or had by such adoption become vested with such “mystic significance” as to render it unlawful to apply them to vulgar use as trade-marks.



Applicant's Mark.

555. C. GOODWIN & CO.

November 23, 1878. 19 MS. D., 112.

DOOLITTLE, Acting Commissioner:

Patented Device—Ornamentation.—This trade-mark consists essentially of a strip of uniform width extending along the side of a package, the strip contrasting in color with the package. Registration refused, 1st, because the mark is the subject-matter of a claim in a patent, and, since a trade-mark remains in force thirty years, to permit the same to be protected so as to give its exclusive use to a patentee long after his patent had expired would be a fraud on the

public. (Con. Fruit Jar Co., 14 O. G., 269.) 2d. The alleged mark is ornamental in character. It is not meant to hold that a trade-mark is objectionable because it is ornamental, but it must be clear that it is not used as a matter of ornamentation alone, but that it has the independent quality of distinguishing the goods of one manufacturer from the same goods made by another.

556. COATS.

July 8, 1879. C. D. 1879, 204.

PAINE, Commissioner:

Borders Are Not Trade-Marks—What May Be a Trade-Mark.—To make borders serve as trade-marks would be to transform that which in the common acceptance is only incident and non-essential, like the frame of a picture, into the essential features of the device; but two parallel scales of inches, when so used as to be the main features of the entire symbol in which they are shown, will constitute a lawful trade-mark.

557. WHITAKER.

July 9, 1879. Endorsed.

DOOLITTLE, Acting Commissioner:

“White,” on a White Package for Hams.—It being settled law that a person cannot adopt as his trade-mark the color of the package in which his goods are enclosed, and as it is the practice of merchants to enclose their hams in white packages, and the word “*white*” not being appropriate to the color of the hams themselves, it simply indicates to the world the same thing as the color of the package, and under such circumstances the word is not a valid trade-mark and should not be registered.



Applicant's Mark.

558. FRESE.

July 28, 1879. 20 MS. D., 54

DOOLITTLE, Acting Commissioner:

“Incomparable” With a Line Over It.—The word “Incomparable” is not fit subject-matter for a trade-mark; but if it were not a common practice to draw the attention of the public to advertisements by printed black lines upon their face, the presence of such line over this word might give it a different significance than that of merely a descriptive word. It is also doubtful whether the dash renders the word sufficiently distinctive to give it trade-mark properties.

559. SWIFT.

August 16, 1879. 20 MS. D., 69.

DOOLITTLE, Acting Commissioner:

“S. S. S.” Associated With the Words Swift’s Syphilitic Specific.—While the letters “S. S. S.” standing alone would probably constitute a good trade-mark, when those letters are on the same label and closely associated with the words “Swift’s Syphilitic Specific,” of which they are the initial letters, the case is brought under the doctrine of *ex parte* Johnson & Co., 2 O. G., 315, and registration should be refused.

560. CIGAR MAKERS’ ASSOCIATION OF THE
PACIFIC COAST.

October 9, 1879. C. D. 1879, 264.

DOOLITTLE, Acting Commissioner:

Cigar Makers’ Symbol Not a Valid Trade-Mark.—Where the purpose of an alleged trade-mark is that of a symbol, only indicating the fact alone that those who employ it are members of a certain association, it does not possess the qualities of a trade-mark, especially when the avowed object of the mark is in restraint of trade, to-wit: by discouraging the Chinese from making the same goods (cigars).

561. CENTEMERI & CO.

March 17, 1880. 20 MS. D., 489.

PAINE, Commissioner:

Name and a Looped Flourish.—Applicant's trade-mark consists of his name in connection with a looped flourish. If his mark was his name in connection with a punctuation point registration would be refused. If it was his name in connection with a star it would be granted. The mark presented falls between the two, and, resolving the doubt in favor of the applicant, it may be registered.

See No. 412 for *fac-simile*.

562. STRAITON & STORM.

May 26, 1880. C. D. 1880, 197.

MARBLE, Commissioner:

Ribbon on Cigar Box.—“A waved band or ribbon of rectilinear form, longer than it is wide, which is fastened to the two ends of a cigar box, and so placed with reference to the cigars within the box as to be below some of said cigars and above the remaining cigars,” has no mechanical function, nor is it an old form of device, and may be registered as a trade-mark.

563. LANDRETH.

April 23, 1884. C. D. 1885, 90.

BUTTERWORTH, Commissioner:

Red Colored Bag Not a Trade-Mark.—A red bag, either plain or with lettering thereon and made of any material, is not a proper trade-mark for seed peas. Neither color alone nor the form of a package can constitute a trade-mark. If it could, another might have the exclusive right to use a blue bag, etc., and thus trade might be throttled.

564. PEARSALL.

January 27, 1885. MS. D., 203.

BUTTERWORTH, Commissioner:

“Wooden Indian,” for Cigars.—Although the figures of Indians, which are generally made of wood, are everywhere the recognized sign of the tobacconist, and any one using such

a figure has the right to call it by its proper name, this does not prevent one from acquiring the exclusive right to use the words "Wooden Indian" as a trade-mark for cigars.

565. PERKINS & ERNST.

May 14, 1885. 28 MS. D., 93.

MONTGOMERY, Commissioner:

"Penny" Not a Valid Trade-Mark for Tobacco.—No one has a right to monopolize the word "Penny" as a trade-mark for tobacco; for even though the present applicant may not sell his tobacco at a penny a plug, some one else may decrease the size of a plug so as to be able to sell it at such a price, and they would then have the right to denominate their tobacco "Penny tobacco."

566. SILVER LAKE CO.

July 6, 1886. 31 MS. D., 132.

MONTGOMERY, Commissioner:

"A., B. and C.," Registrable for Sash Cord.—Applicant presented three applications for registration. One for the letter "A," a second for the letter "B," and the third for the letter "C," each letter to be used on a different species of sash cord. *Held*, 1st. That plain letters may be registered as trade-marks; and 2nd. That the fact, which is conceded, that these several letters are used each to mark a certain kind of cord, presents no bar to their registration as trade-marks.

567. SANFORD & SONS.

July 31, 1886. 31 MS. D., 223.

MONTGOMERY, Commissioner:

"Parti-Colored Back," for Carpets.—Applicants presented for registration an alleged trade-mark which they describe as consisting "in the parti-colored back of velvet carpets, the parti-coloring being produced by weaving in the back of such carpets filling threads which appear only upon the back." *Held*, that it was not intended to assert that a proper symbol or figure might not be woven in the carpet so as to constitute a proper trade-mark, but in the present case the carpet itself is, if anything is, the trade-mark, and the alleged trade-mark should not be registered.

568. EYDOUX.

October 27, 1886. 31 MS. D., 500.

MONTGOMERY, Commissioner:

"Virgin Mary."—The representation of the Virgin Mary should not be registered as a trade-mark.



Applicant's Mark.

569. BLOCH & CO.

July 9, 1887. 40 O. G., 443.

HALL, Commissioner:

"Knights of Labor," for Whiskey—False Representation.—A trade-mark adopted by a manufacturer or dealer in distilled spirits at Milwaukee, Wisconsin, in commerce with Germany, which contains the legends "Knights of Labor Whiskey" and "K. of L. Distillery, Sour Mash," and which clearly and distinctly refers the origin and ownership of the spirits so marked to the Knights of Labor of the United States, so that the public would be induced to purchase under the belief that they were manufactured by or under the auspices of that association, and therefore possessed the excellence of superior qualities usually characterizing the productions or workmanship of artisans, workmen, etc., belonging to that association, and also from sympathy with its sentiments and principles, is fraudulent and unlawful, and must be denied registry.

No rule can be adopted by which to determine what is or is not a lawful trade-mark. In many cases the misrepresentation may not appear upon the face of the trade-mark and accompanying application, and the office may not be in

possession of the facts which would enable it to guard against the registry of a false trade-mark; but whenever it clearly and distinctly appears that the proposed trade-mark constitutes a misrepresentation of such a character that the courts would not protect, the office should refuse the registration.

570. TURNER.

July 11, 1887. 34 MS. D., 469.

HALL, Commissioner:

“K. of L.” for Gloves.—While it is fair to infer that the words and letters “K. of L.” refer to the Knights of Labor, it is a mere inference; there is nothing that points to that association as the origin or owner of the article used in commerce. The device is rather a catch-word to give prominence to the trade-mark, and may therefore be registered. This case distinguished from *ex parte* Block & Co., 40 O. G., 443.

571. KING.

December 17, 1888. 46 O. G., 119.

HALL, Commissioner:

Exclusive Property in Emblems Used by Societies. Applicant presented for registration as a trade-mark an exact representation of the well-known badge of the Grand Army of the Republic, which he proposed to use as a water-mark on writing paper. The fact that the Grand Army of the Republic have adopted a certain design for their badge, or for the letter-head of writing paper used by them, does not secure to such organization such exclusive property in the particular representation as would deprive an applicant who has complied with all the requirements of the statute of his right to register the same as a trade-mark. It is well settled that emblems which have been used by societies possess no sanctity or sacredness which precludes their being used and applied as trade-marks.

Trade-Marks which Embellish.—The objection of the examiner that the trade-mark embellishes the paper is not approved. It may be said that scarcely any trade-mark can be applied to paper without incidentally embellishing it. If the design is a legitimate subject of a trade-mark and is not prohibited by law, the fact that it incidentally embellishes the page on which it appears cannot deprive it of its lawful quality as a trade-mark.

572. CHESTER OIL CO.

January 21, 1889. 39 MS. D., 110.

MONTGOMERY, Commissioner:

"Our Brand" Not Registrable.—The words "Our Brand" being incapable of exclusive appropriation by any one person should not be registered as a trade-mark for oil. Any person who sells oil has the primary right to assert that he is selling his brand of oil.

573. HURLBURT MFG. CO.

November 30, 1889. 41 MS. D., 351.

MITCHELL, Commissioner:

Representation of Goods.—The representation of a wagon brake lock attached to the panel of a wagon body with whip socket and whip possesses sufficient arbitrary matter over the mere representation of a wagon brake lock to entitle it to registration as a trade-mark for wagon brake locks.



Applicant's Mark.

574. FOREE.

December 18, 1889. 41 MS. D., 426.

MITCHELL, Commissioner:

"10 Cents for Each One Dollar."—Applicant states that the above words, which they desired to register as a trade-mark for tobacco, followed the words "Save this tag —

it is good for." *Held*, that the words sought to be registered, taken with the other words, form an intelligible sentence pointing to something else than origin or ownership. The object of the words is to cause the sale of the article to which it is affixed, not by pointing to applicant as the maker, but by advertising an opportunity for exchanging the label for a dime with the retail dealer. The words therefore do not constitute a trade-mark.

**575. RICHMOND v. THE DR. S. A. RICHMOND
NERVINE CO.**

June 21, 1890. 52 O. G., 307.

MITCHELL, Commissioner:

Personal Names — "Portrait" — Trade-Marks. — The principles applicable to trade-mark cases involving personal names are doubtless applicable to trade-mark cases involving portrait trade-marks.

No person can acquire by adoption such an interest in the name of another person as to prevent that person from using his own name in a fair and honest manner in the ordinary course of business.

To justify the exclusive use of any man's name or portrait as against the man who bears the name or is represented by the portrait, some estoppel must be found to exist operating to deprive the latter of what would otherwise be his right.

576. PROCTOR & GAMBLE v. COLUMBIA MFG. CO.

October 10, 1890. 44 MS. D., 300.

MITCHELL, Commissioner:

Trade-Mark Must Be Attached to Goods and the Goods Sold.—C. M. Co. is a registrant. P. & G. are applicants. The burden of proof is on P. & G. The evidence taken by them shows that they stamped the mark in question on a box of soap, but does not show they ever sold the soap. Priority awarded C. Mfg. Co., since the trade-mark law requires that, in order to acquire ownership of a mark, such mark must be attached to goods and the goods sold.

577. ROY & NOURSE.

February 14, 1891. 54 O. G., 1267.

FISHER, Acting Commissioner:

Trade-Mark for Use in Dealing in Real Estate.—A trade-mark adopted for use in dealing in real estate is not proper subject for registration.

Where the mark sought to be registered was affixed to bill-heads, letter-heads, cards and circulars which applicants used in their business, *held*, that such a use did not come within the statute.

578. NEWHALL.

May 20, 1891. 47 MS. D., 22.

MITCHELL, Commissioner:

Design—Trade-Mark.—Applicant's trade-mark for silverware consisted of the representation of an old woman and a cat. He showed it as represented in relief upon the handle of a spoon. The examiner rejected it upon the ground that it was the subject of a design patent. *Held*, that the representation of the old woman and cat was proper trade-mark matter, and that any ornamental suggestiveness which it possessed was immaterial, but that applicant should show his mark disconnected from the spoon.



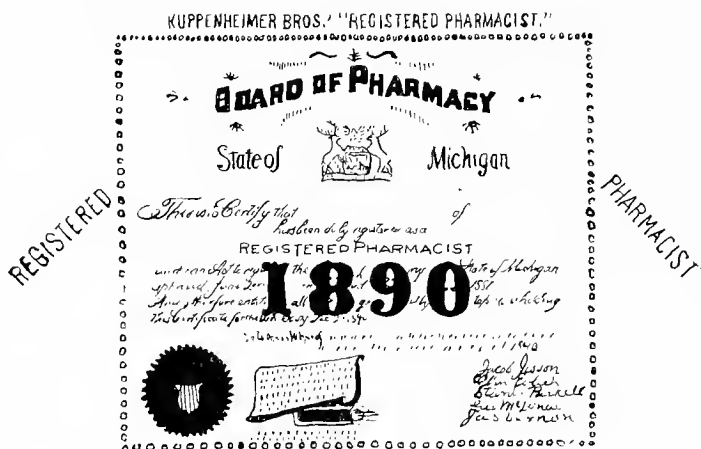
Mark as Registered.

579. KUPPENHEIMER BROS.

July 7, 1892. 60 O. G., 439.

SIMONDS, Commissioner:

What Is Not Registrable.—A *fac-simile* of the certificate issued by a State Board of Pharmacy to registered pharmacists is not registrable as a trade-mark.



MANUFACTURED BY

Kuppenheimer Bros., Grand Rapids, Mich.

Applicants' Mark.

580. SCHMACHTENBERG BROS.

October 8, 1892. 51 MS. D., 204.

FROTHINGHAM, Assistant Commissioner:

U. S. Coat of Arms.—Applicants' trade-mark, which consisted substantially of the coat-of-arms of the United States, refused registration because it is against public policy to register as a trade-mark the coat-of-arms of any state or nation.



Applicants' Mark.

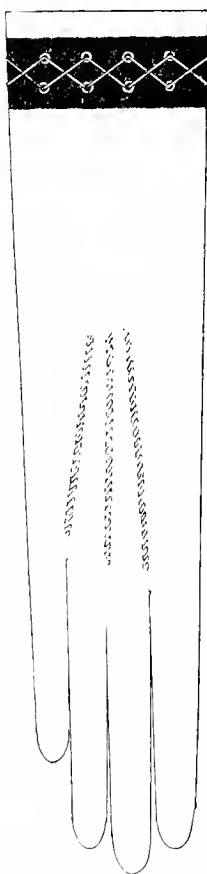
581. PEYSER & CO.

January 19, 1893. 62 O. G., 588.

SIMONDS, Commissioner:

Decorative Objects.—A “representation of a band with eyelets therein and cross-lacings connecting the eyelets,” *held* not registrable as a trade-mark, since its function is purely decorative in the connection in which it is intended for use.

The primary function of a trade-mark is to denote the origin of the article which bears it. A “representation” which, upon its face, appears clearly to have another purpose, such as decoration, and which by reason of that decorative character creates no suspicion that it is intended as a trade-mark, is not registrable as such.



Applicants' Mark.

582. LANGDON ET AL.

October 7, 1892. 61 O. G., 286.

SIMONDS, Commissioner:

Joint Owners — Independent Registration by One.—

An applicant will not be granted independent registration of a trade-mark when it appears that he is one of two or more parties who have a right to use such mark, section 2 of the trade-mark act requiring it to appear that than the applicant "no other person, firm or corporation has the right to such use."

583. SCHMIDT.

July 24, 1893. 53 MS. D., 7.

FISHER, Acting Commissioner:

Registration of Words for German Citizens.—The word "Goliath" may be registered as a trade-mark to a citizen of Germany, although that government would not register it, since this country, in the treaty between the United States and Germany, does not require registration in Germany as a condition for registration here, and since, although a German citizen cannot become the exclusive owner of a word in Germany, he may do so in the United States. This decision differentiated from *ex parte* Haggemacher, 60 O. G., 438.

584. HUMBER & CO.

June 5, 1896. 59 MS. D., 147.

FISHER, Acting Commissioner:

"Striped Cycle Tire" — Definiteness.—Applicants' essential features were a "series of stripes having contrasting colors incorporated in the rubber of the tire or applied to the surface as a paint or stain." *Held*, the above to be a sufficiently definite statement of what the mark consisted, notwithstanding *ex parte* Adam Roth Grocery Co., 62 O. G., 315, etc., and that the mark was a valid one, notwithstanding *ex parte* Landreth, 31 O. G., 1441, *Fleischmann v. Starkey*, 25 Fed. Rep., 127, etc., citing in support of the position that the mark was valid and sufficiently definite, *ex parte* Roxbury Carpet Co., 18 MS. D., 423, etc.

See No. 202 for *fac-simile*.

585. BRUNSWIG.

August 17, 1895. 57 MS. D., 342.

FISHER, Assistant Commissioner:

Printers' Ornament—Not a Valid Trade-Mark.—Where applicant's original trade-mark was rejected on a prior registration and he amended by canceling from his drawing and statement the infringing matter, leaving only an ordinary printers' ornament, and stated that the essential feature of his mark was the printers' ornament, *held*, that such device was not in fact applicant's mark, and was incapable of exclusive appropriation as a trade-mark.



Applicant's Mark as Originally Presented.



Mark as Amended.

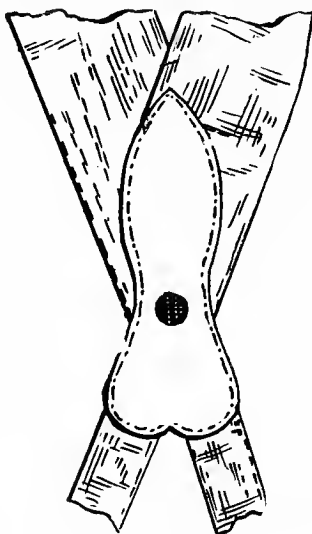
586. SILVERMAN & CO.

May 2, 1896. 59 MS. D., 76.

SEYMOUR, Commissioner:

Representation of Part of Suspender for Suspenders. Applicant claimed "The representation of a hole formed in the front or back facing strip of a suspender," but showed as his trade-mark a part of the suspenders. *Held*, that a photograph of an article is not registrable as a trade-mark for such article for the same reason that an accurate verbal description of such an article would not be registrable. Other dealers

have the same right to so describe their goods; and this is so whether applicants are protected by a patent on their goods or not, because the patents may eventually come into the possession of a different party than the owner of the trade-mark.



Applicants' Mark.

587. PATTBERG & BROS.

August 1, 1893. 53 MS. D., 49.

FISHER, Acting Commissioner:

“The Favorite.”—The words “The Favorite” should not be registered as a trade-mark, since the intention of the applicants in the use of the words seems not to be to indicate origin or ownership, but that their goods are the most popular, *the favorite*, with the public. Any other manufacturer has the right to use these words on his goods, and in fact his assertion may be true while that of the present applicant may not.

588. DUNLAP.

July 31, 1894. Endorsed.

SEYMOUR, Commissioner:

“Dunlap Carpet”—**Refused.**—It was contended that the words “Dunlap Carpet” were not *merely* the name of the applicant and should be registered as a trade-mark for carpets, but the examiner's refusal to register was affirmed.

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Author	Vol.
Newton, James Thornwell.	
Title	Copy
Newton's digest of patent office trademark decisions.	

Date	Borrower's Name

